

## 72 Am. Jur. 2d State and Local Taxation Eleven LV A Refs.

American Jurisprudence, Second Edition | May 2021 Update

### State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

### Part Eleven. Sale of Land for Nonpayment of Taxes


#### LV. In General

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## Research References

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2900, 2918

### A.L.R. Library

A.L.R. Index, Tax Sales

West's A.L.R. Digest, [Taxation](#)  2900, 2918

### Trial Strategy

[Proof of Circumstances Justifying the Setting Aside of Tax Sales of Real Property, 28 Am. Jur. Proof of Facts 3d 439](#)

### Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 141](#)

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## 72 Am. Jur. 2d State and Local Taxation § 803

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes


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## § 803. Generally

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### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2900, 2918

### Trial Strategy

[Proof of Circumstances Justifying the Setting Aside of Tax Sales of Real Property, 28 Am. Jur. Proof of Facts 3d 439](#)

### Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 141](#) (Complaint, petition, or declaration—Allegation—Taxing district's authority to sell property for failure to pay taxes)

The sale of land to enforce the payment of taxes assessed thereon is within the taxing power of the states.<sup>1</sup>

**Definition:**

A "tax sale" is an involuntary transfer of ownership facilitated by an action of the State for nonpayment of ad valorem taxes.<sup>2</sup>

The sale of the property of a defaulting taxpayer is governed by statute.<sup>3</sup> In fact, the tax sale process is purely a statutory creation and requires material compliance with each step of the governing statutes,<sup>4</sup> but such statutes will not be enlarged by judicial construction.<sup>5</sup>

**Observation:**

The statute setting forth the Federal Deposit Insurance Corporation's (FDIC) exemption from taxation<sup>6</sup> prohibits State and local taxing authorities from foreclosing on property subject to an FDIC lien without its consent.<sup>7</sup>

The power to sell real estate for failure to pay the tax imposed thereon should not be exercised where the right is doubtful.<sup>8</sup> Land may be sold only for taxes for which it is legally liable.<sup>9</sup> The purpose of tax sales is not to strip a taxpayer of his or her property but to insure the collection of taxes.<sup>10</sup>

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Footnotes

- 1 Leigh v. Green, 193 U.S. 79, 24 S. Ct. 390, 48 L. Ed. 623 (1904); Albertson v. Leca, 447 A.2d 383 (R.I. 1982).
- 2 C & C Energy, L.L.C. v. Cody Investments, L.L.C., 41 So. 3d 1134 (La. 2010).
- 3 Crusader Servicing Corp. v. County of Laurens, 382 S.C. 25, 674 S.E.2d 495 (Ct. App. 2009).
- 4 In re 2007 Tax Sale in Lake County, 926 N.E.2d 524 (Ind. Ct. App. 2010).  
As to the effect of noncompliance with the provisions of a decree or order of sale, with regard to the sale of property in parcels or en masse, generally, see Am. Jur. 2d, Judicial Sales § 47.
- 5 140 Reservoir Avenue Associates v. Sepe Investments, LLC, 941 A.2d 805 (R.I. 2007).
- 6 12 U.S.C.A. § 1825(b).
- 7 S & R Associates v. Lynn Realty Corp., 338 N.J. Super. 350, 769 A.2d 413 (App. Div. 2001).
- 8 Beaty v. Knowler's Lessee, 29 U.S. 152, 7 L. Ed. 813, 1830 WL 3858 (1830).

- 9                      [Ballance v. Forsyth](#), 54 U.S. 18, 13 How. 18, 14 L. Ed. 32, 1851 WL 6677 (1851); [New Netherlands American Mortg. Bank v. Greene & Lawrence County Drainage Dist.](#), 199 Ark. 217, 133 S.W.2d 446 (1939).
- 10                     [C & C Energy, L.L.C. v. Cody Investments, L.L.C.](#), 41 So. 3d 1134 (La. 2010); [Constantino v. Carbon County Tax Claim Bureau](#), 895 A.2d 72 (Pa. Commw. Ct. 2006).

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## 72 Am. Jur. 2d State and Local Taxation § 804

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## § 804. Tax-exempt property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2900](#), [2918](#)

The property of the State or of its municipal corporations and other local subdivisions, as well as the property of religious, charitable, and educational institutions devoted to the purpose of their organization, is generally exempt from taxation.<sup>1</sup> If such exempt property is assessed, a sale for nonpayment of the tax will pass no title;<sup>2</sup> a judgment approving a tax sale for tax-exempt property is void and may be attacked at any time.<sup>3</sup> No title is vested in the purchaser by the sale of land of the United States for state taxes.<sup>4</sup>

Where a church or similar organization has property which is used in part for exempt purposes and in part for commercial purposes, and part of it is thus exempt from taxation, if the taxes are not paid, the entire property, including the exempt portion, may be sold for the nonpayment of the taxes.<sup>5</sup>

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#### Footnotes

- <sup>1</sup> §§ 234 to 308.
- <sup>2</sup> *Rich v. Braxton*, 158 U.S. 375, 15 S. Ct. 1006, 39 L. Ed. 1022 (1895); *Application of Dickey*, 72 Ill. 2d 317, 21 Ill. Dec. 182, 381 N.E.2d 260 (1978) (exempt leasehold mineral interest).
- <sup>3</sup> *Beth-El All Nations Church v. City of Chicago*, 486 F.3d 286 (7th Cir. 2007).
- <sup>4</sup> *McGoon v. Scales*, 76 U.S. 23, 19 L. Ed. 545, 1869 WL 11462 (1869).  
As to state taxation of property of the United States, see §§ 143 to 156.

5 [State ex rel. Cragor Co. v. Doss, 150 Fla. 491, 8 So. 2d 17 \(1942\).](#)

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## 72 Am. Jur. 2d State and Local Taxation § 805

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## § 805. Tax-exempt property—Property acquired by tax-exempt owner after assessment

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### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2900](#), [2918](#)

### A.L.R. Library

[Rights in respect of real-estate taxes where property is taken in eminent domain](#), 45 A.L.R.2d 522

When a religious, charitable, or equitable institution or other such body whose exemption from taxation depends upon express statutory provisions acquires property, the exemption granted does not go to the extent of exonerating property from tax liens existing against it at the time when the institution acquired such property.<sup>1</sup> In the case, however, of the State or of a municipal or other public corporation whose exemption from taxation exists in the absence of statute upon grounds of public policy,<sup>2</sup> land which it acquires cannot be sold for the nonpayment of taxes assessed thereon prior to the acquisition of the land.<sup>3</sup> The rule is based on public policy, one ground for which is that if public property is to be burdened with a tax lien, the public might lose it entirely through oversight or carelessness of its agents in failing to pay the taxes when due and allowing the same to be sold and the title to pass to third parties.<sup>4</sup> In any event, if the transfer takes place after the inception of the assessment proceedings but before the lien has attached, the land will not be subject to the lien.<sup>5</sup> There is, however, authority for the contrary view that the purchase by a municipal corporation of land upon which taxes are delinquent does not prevent a sale for the taxes and the acquisition of title to the property by a purchaser at the sale.<sup>6</sup>



Even where there is a valid tax lien on lands acquired by the United States, a state court is, in the absence of the consent of the United States, without jurisdiction to entertain proceedings for the sale of the lands.<sup>7</sup>

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Footnotes

- 1 [Jefferson Post No. 15, Am. Legion, Dept. of Ky. v. City of Louisville, 280 S.W.2d 706, 54 A.L.R.2d 992 \(Ky. 1955\).](#)
- 2 [§ 242.](#)
- 3 [Chizek v. Port of Newport, 252 Or. 570, 450 P.2d 749 \(1969\).](#)
- 4 [State v. Locke, 29 N.M. 148, 219 P. 790, 30 A.L.R. 407 \(1923\).](#)
- 5 [Gachet v. City of New Orleans, 52 La. Ann. 813, 27 So. 348 \(1900\).](#)
- 6 [Petition of Auditor General, 204 Mich. 442, 170 N.W. 549, 2 A.L.R. 1526 \(1918\).](#)
- 7 [U.S. v. State of Alabama, 313 U.S. 274, 61 S. Ct. 1011, 85 L. Ed. 1327 \(1941\).](#)

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## 72 Am. Jur. 2d State and Local Taxation § 806

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### Part Eleven. Sale of Land for Nonpayment of Taxes


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## § 806. Property in custody of court; necessity of court's consent

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### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2900, 2918

### A.L.R. Library

[Necessity of consent of court to tax sale of property in custody of court or of receiver or trustee appointed by it, 3 A.L.R.2d 893](#)

According to some courts, property in custody of a court or a court-appointed receiver or trustee cannot be levied upon and sold, without prior consent of the court, by an officer of the State or a political subdivision thereof in satisfaction of unpaid taxes.<sup>1</sup> This rule applies to sales of property in the hands of a federal receiver at the time that it was attempted to have it sold<sup>2</sup> and to property in the custody of a state court at the time of the attempted sale.<sup>3</sup> According to other courts, no prior consent to a tax sale is necessary where the property is in the custody of the court or of a receiver or trustee appointed by such court.<sup>4</sup>

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#### Footnotes

- <sup>1</sup> [Dayton v. Stanard](#), 241 U.S. 588, 36 S. Ct. 695, 60 L. Ed. 1190 (1916); [Bowman v. Towery](#), 1952 OK 192, 207 Okla. 4, 248 P.2d 1030 (1952).
- <sup>2</sup> [Am. Jur. 2d, Receivers](#) § 393.

3 Coker v. Norman, 162 Ga. 238, 133 S.E. 243 (1926).

4 Johnson v. Smith, 297 N.Y. 165, 77 N.E.2d 386, 3 A.L.R.2d 888 (1948).

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## Research References

### West's Key Number Digest

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### A.L.R. Library

A.L.R. Index, Tax Sales

West's A.L.R. Digest, [Taxation](#)  [2111](#), [2901](#), [2929](#), [2939](#), [2942](#) to [2953](#), [2963](#) to [2969](#)

### Trial Strategy

[Proof of Circumstances Justifying the Setting Aside of Tax Sales of Real Property](#), 28 Am. Jur. Proof of Facts 3d 439

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## 72 Am. Jur. 2d State and Local Taxation § 807

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## § 807. Methods of effecting sale

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### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2111](#), [2901](#), [2929](#), [2939](#), [2942](#) to [2953](#), [2963](#) to [2969](#)

A judicial proceeding is not inherently or constitutionally necessary as a condition precedent to a sale of property for unpaid taxes, nor is a judgment for taxes due essential where the proceeding is merely administrative and not judicial in character.<sup>1</sup> The legislature may constitutionally, and without violating the Due Process Clause or a state constitutional guarantee of trial by jury, provide that tax lien foreclosure proceedings are equitable proceedings.<sup>2</sup>

Tax statutes providing for a tax sale without suit and judgment in a court, or not otherwise providing for judicial inquiry or judicial proceedings, do not violate due process.<sup>3</sup> In many states, however, a less drastic procedure is provided, and the purchaser at the tax sale acquires only a lien,<sup>4</sup> which ripens into title only through a process of foreclosure by judicial proceedings instituted after the period of redemption has expired.<sup>5</sup>

A constitutional provision requiring the legislature to provide for the speedy sale of land for taxes without the necessity of a suit in court is not exclusive, and does not preclude the legislature from also setting up a scheme for proceedings in court by taxing units to enforce their various claims against the taxed property, where another provision of the constitution authorizes sales for taxes under such regulations as the legislature may provide.<sup>6</sup>

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#### Footnotes

<sup>1</sup> [Lucas v. Purdy](#), 142 Iowa 359, 120 N.W. 1063 (1909); [Nind v. Myers](#), 15 N.D. 400, 109 N.W. 335 (1906).

- 2                    *Spitcaufsky v. Hatten*, 353 Mo. 94, 182 S.W.2d 86, 160 A.L.R. 990 (1944) (overruled on other grounds by,  
Director of Dept. of Revenue, Jackson County v. Parcels of Land Encumbered with Delinquent Tax Liens,  
555 S.W.2d 293 (Mo. 1977)).
- 3                    *Kennen v. McFarling*, 350 Mo. 180, 165 S.W.2d 681 (1942).
- 4                    § 848.
- 5                    *Leigh v. Green*, 64 Neb. 533, 90 N.W. 255 (1902), *aff'd*, 193 U.S. 79, 24 S. Ct. 390, 48 L. Ed. 623 (1904).  
As to redemption, see §§ 889 to 931.
- 6                    *Mexia Independent School Dist. v. City of Mexia*, 134 Tex. 95, 133 S.W.2d 118, 134 A.L.R. 1277 (1939).

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## 72 Am. Jur. 2d State and Local Taxation § 808

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## § 808. Steps essential to valid sale

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### West's Key Number Digest

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### Trial Strategy

[Proof of Circumstances Justifying the Setting Aside of Tax Sales of Real Property](#), 28 Am. Jur. Proof of Facts 3d 439

To comply with due process requirements for the sale of land for nonpayment of taxes, the legislature must prescribe a procedure consisting of formal steps including the listing and assessing of the property, the levy of the tax on the property in proportion to its value, the nonpayment of the tax, the issuance of the tax warrant, and the tax collector's sale of the property.<sup>1</sup> While a strict compliance with all the provisions of the statute with respect to the assessment of the tax is not necessarily essential to the validity of an assessment, unless an assessment has been made in such a manner that the tax will be sustained in proceedings to collect it, it cannot be made the basis of a valid sale.<sup>2</sup> The legislature may provide for the preserving of evidence of compliance with the requirements respecting the sale, but it is not essential to due process of law that all the steps be made a matter of record or be proved by written evidence.<sup>3</sup> However, statutes requiring the compiling and publishing of lists of lands which are delinquent for nonpayment of taxes, so as to give notice to the landowner of the fact of delinquency and the amount of taxes delinquent, generally must be strictly followed before there can be any valid sale of land for delinquent taxes.<sup>4</sup>

Some statutes require the collector to exhaust his or her remedies against the personal property of the owner before proceeding against the land,<sup>5</sup> but under others, exhaustion is not necessary.<sup>6</sup> When the sale can be made only after other means of collecting the tax have been exhausted, the officer's return must show that there were no goods and chattels of the delinquent owner out of which the tax could be collected.<sup>7</sup>

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Footnotes

- 1 [Lumsden v. Erstine](#), 205 Ark. 1004, 172 S.W.2d 409, 147 A.L.R. 1132 (1943).
- 2 [Parker v. Overman](#), 59 U.S. 137, 18 How. 137, 15 L. Ed. 318, 1855 WL 8254 (1855); [Carter v. Wroten](#), 187 S.C. 432, 198 S.E. 13, 119 A.L.R. 379 (1938).
- 3 [Straus v. Foxworth](#), 231 U.S. 162, 34 S. Ct. 42, 58 L. Ed. 168 (1913).
- 4 [Martin v. Barbour](#), 140 U.S. 634, 11 S. Ct. 944, 35 L. Ed. 546 (1891).
- 5 [Thatcher v. Powell](#), 19 U.S. 119, 5 L. Ed. 221, 1821 WL 2171 (1821).
- 6 [Thompson v. Carroll](#), 63 U.S. 422, 22 How. 422, 16 L. Ed. 387, 1859 WL 10662 (1859).
- 7 [Thatcher v. Powell](#), 19 U.S. 119, 5 L. Ed. 221, 1821 WL 2171 (1821); [Bradford v. Durham](#), 54 Or. 1, 101 P. 897 (1909).

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## 72 Am. Jur. 2d State and Local Taxation § 809

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## § 809. Steps essential to valid sale—Construction of requirements; effect of noncompliance

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### West's Key Number Digest

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Statutes dealing with land forfeitures for delinquent taxes should be strictly construed in favor of the landowners,<sup>1</sup> and such sales must be conducted in strict compliance with statutory requirements,<sup>2</sup> or they are void.<sup>3</sup> In fact, absent strict compliance with the statute governing foreclosure of tax liens by actions in rem, it would violate due process to allow a governmental taking of land for failure to pay taxes.<sup>4</sup> The validity of a tax sale is determined by the statutory law in effect at the time when the sale was made.<sup>5</sup>

### CUMULATIVE SUPPLEMENT

#### Cases:

Failure to comply with statutory tax lien sale procedures required that tax deed be set aside. [West's Ann.W.Va.Code, 11A-3-1. Rebuild America, Inc. v. Davis, 773 S.E.2d 11 \(W. Va. 2015\).](#)

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#### Footnotes

- 1 City of Jackson v. Rebuild America, Inc., 77 So. 3d 1105 (Miss. Ct. App. 2011), cert. denied, 78 So. 3d 906 (Miss. 2012); First Bank and Trust Co. v. City of Providence, 827 A.2d 606 (R.I. 2003).
- 2 In re Upset Sale Tax Claim Bureau of Luzerne County Pennsylvania Held December 11, 2008, 990 A.2d 136 (Pa. Commw. Ct. 2010); King v. James, 388 S.C. 16, 694 S.E.2d 35 (Ct. App. 2010).
- 3 City of Jackson v. Rebuild America, Inc., 77 So. 3d 1105 (Miss. Ct. App. 2011), cert. denied, 78 So. 3d 906 (Miss. 2012).
- 4 Topps v. County of Walworth, 260 Wis. 2d 225, 2003 WI App 30, 659 N.W.2d 177 (Ct. App. 2003).
- 5 Lupo v. State, Dept. of Transp., 771 So. 2d 358 (Miss. 2000).

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## 72 Am. Jur. 2d State and Local Taxation § 810

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## § 810. Steps essential to valid sale—Seizure and possession of property of defaulting taxpayer

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### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2111](#), [2901](#), [2929](#), [2939](#), [2942](#) to [2953](#), [2963](#) to [2969](#)

Some statutes require, before a sale for delinquent taxes, that the sheriff or other officer seize and take possession of a defaulting taxpayer's property. A statute of this kind does not call for an actual dispossession and ouster but is satisfied where the sheriff or a deputy enters upon such real estate, armed with a tax execution, exhibits it and notifies the owner that under the authority of the execution, the land has been taken possession of although the owner continues in occupation.<sup>1</sup>

A statute does not violate due process guarantees insofar as it authorizes the seizure of a taxpayer's unsecured property for purposes of collection of taxes due thereon without affording the taxpayer an administrative hearing prior to such seizure, but insofar as it authorizes a sale of the property without affording the taxpayer an administrative hearing prior thereto, the statute does violate the Due Process Clause.<sup>2</sup>

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### Footnotes

- <sup>1</sup> [Glymph v. Smith](#), 180 S.C. 382, 185 S.E. 911, 105 A.L.R. 631 (1936).
- <sup>2</sup> [T. M. Cobb Co. v. County of Los Angeles](#), 16 Cal. 3d 606, 128 Cal. Rptr. 655, 547 P.2d 431, 19 U.C.C. Rep. Serv. 305 (1976).

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## 72 Am. Jur. 2d State and Local Taxation § 811

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### State and Local Taxation

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## § 811. Necessity of impleading other tax units

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### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2111](#), [2901](#), [2929](#), [2939](#), [2942](#) to [2953](#), [2963](#) to [2969](#)

The liens of the State and of the various taxing units of the State for general property taxes are of equal dignity, and a sale of land for delinquent taxes of one such taxing body does not extinguish a lien that exists against it for general taxes of other taxing units.<sup>1</sup> When each taxing unit is left to its own time and device to fix the tax lien and enforce it against the property, the result is a multiplicity of proceedings, pyramiding of costs, confusion of title, and complicated rights of redemption.<sup>2</sup> Accordingly, statutes may provide that a taxing unit bringing a suit for delinquent taxes levied against property and seeking foreclosure of its lien thereon may implead as parties defendant, or give notice to, other taxing units which have delinquent tax claims against the property in which way, the claims of all of them may be adjudicated and their accrued tax claims upon the property in question determined.<sup>3</sup> Under such statute, when a taxing unit is impleaded in a proceeding by another taxing unit for the foreclosure of a tax lien and does not appear, its lien will be cut off upon the sale of the land in satisfaction of the lien or liens of the parties to the suit, but the liens of those taxing units who are not made parties defendant will remain liens upon the property after its sale and conveyance under the foreclosure decree.<sup>4</sup> Such a statute does not unconstitutionally deprive the taxpayer of due process of law merely because the taxpayer is not entitled to an additional notice upon the filing of a cross-action by an impleaded or intervening taxing unit, especially where, as provided for by the statute, there is a recital in the original citation requiring the taxpayer to take notice of all claims and pleadings then or thereafter filed in the cause.<sup>5</sup>

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#### Footnotes

<sup>1</sup> §§ 800, 801.

As to the subordination of liens for special assessment, see § 799.

2                   Pearsall Independent School Dist. v. Widner, 136 S.W.2d 647 (Tex. Civ. App. San Antonio 1940).

3                   Mexia Independent School Dist. v. City of Mexia, 134 Tex. 95, 133 S.W.2d 118, 134 A.L.R. 1277 (1939).

4                   City of Bradenton v. Lee, 120 Fla. 100, 162 So. 139 (1935).

5                   Mexia Independent School Dist. v. City of Mexia, 134 Tex. 95, 133 S.W.2d 118, 134 A.L.R. 1277 (1939).

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## 72 Am. Jur. 2d State and Local Taxation Eleven LV C Refs.

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### State and Local Taxation

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#### LV. In General

#### C. Disposition of Proceeds; Rights and Liabilities of Owner

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## Research References

### West's Key Number Digest

West's Key Number Digest, [Taxation](#) 🔑 2978, 2979

### A.L.R. Library

A.L.R. Index, Tax Sales

West's A.L.R. Digest, [Taxation](#) 🔑 2978, 2979

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## 72 Am. Jur. 2d State and Local Taxation § 812

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

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#### C. Disposition of Proceeds; Rights and Liabilities of Owner

## § 812. Disposition of proceeds; right of owner to surplus

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### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2978, 2979

The proceeds of a tax sale are applied in the discharge of delinquent taxes against the property for which the land was sold, and of interest, costs, and penalties, in the manner and order directed by statute; any surplus remaining after the payment of taxes, interest, costs, and penalties is paid to the landowner.<sup>1</sup>

Under some statutes, where land is forfeited to the State, the State holds the title during the redemption period for the sole purpose of the payment of the taxes thereon and cannot dispose of it, except for the taxes unpaid thereon, and when it sells the property for that purpose, the former owner, the former owner's personal representatives or assigns, and any person having a lien on the land at the time of the forfeiture and still existing is entitled to the excess for which the land sells after the taxes, interest, and costs have been paid.<sup>2</sup> Taxpayers, however, will have no right to the excess proceeds of the tax sale during the redemption period.<sup>3</sup> Under other statutes, the former owner of property acquired by a county at a tax sale and resold by it for an amount in excess of the unpaid taxes cannot claim such excess under a statute providing for the disposition of the proceeds of tax foreclosure sales.<sup>4</sup>

A claim for excess funds may be barred under the applicable statute of limitations.<sup>5</sup>

Where private and public claims compete for the proceeds of a tax sale, payment to the government takes priority over satisfaction of private interests.<sup>6</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Neither the nonjudicial nature of tax lien foreclosure sale, nor the deletion, from tax transfer deeds of trust, of language specifically requiring distribution of any excess proceeds to inferior lienholders, affected obligation of trustee conducting foreclosure sale to disburse excess proceeds to inferior lienholders as required by Texas law. [In re Cowin, 492 B.R. 858 \(Bankr. S.D. Tex. 2013\)](#).

Former property owners were not entitled to surplus proceeds of tax foreclosure sale by county, where owners improperly predicated their petition on statute which applied to actions to foreclosure mortgages, not to properties acquired by tax district pursuant to in rem foreclosure proceedings. [N.Y. RPAPL § 1361\(1\)](#). [Hoge v. Chautauqua County, 173 A.D.3d 1731, 104 N.Y.S.3d 813 \(4th Dep't 2019\)](#).

Former owners of real property were entitled to excess proceeds from sale of real property to satisfy tax lien; former owners held title to property before it was sold, and former owners brought their claim for excess proceeds within two-year limitations period. [V.T.C.A., Tax Code §§ 32.07\(a\), 34.04\(a\), \(c\)\(5\)](#). [Dallas County City of Grand Prairie v. Sides, 430 S.W.3d 649 \(Tex. App. Dallas 2014\)](#).

### [END OF SUPPLEMENT]

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### Footnotes

- 1 [City of Anchorage v. Thomas, 624 P.2d 271 \(Alaska 1981\)](#).
- 2 [Elk Garden Big Vein Coal Min. Co. v. Gerstell, 95 W. Va. 471, 121 S.E. 569, 33 A.L.R. 298 \(1924\)](#).
- 3 [Ran-Mar, Inc. v. Town of Berlin, 181 Vt. 26, 2006 VT 117, 912 A.2d 984 \(2006\)](#).
- 4 [King County v. Odman, 8 Wash. 2d 32, 111 P.2d 228, 133 A.L.R. 1440 \(1941\)](#).
- 5 [Bronson v. Board of County Com'rs of Brevard County, 394 So. 2d 575 \(Fla. 5th DCA 1981\)](#).
- 6 [District of Columbia Redevelopment Land Agency v. Eleven Parcels of Land in Squares 2662, 2665, 2666, 2670, 2674, 2837, 2849, 2860, 2866, 589 F.2d 628 \(D.C. Cir. 1978\)](#).

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## 72 Am. Jur. 2d State and Local Taxation § 813

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### Part Eleven. Sale of Land for Nonpayment of Taxes


#### LV. In General

#### C. Disposition of Proceeds; Rights and Liabilities of Owner

## § 813. Sale as discharging owner's personal liability

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2978, 2979

### A.L.R. Library

[Property owner's liability for unpaid taxes following acquisition of property by another at tax sale, 100 A.L.R.3d 593](#)

In jurisdictions in which a tax on real estate is not a personal obligation of the owner but merely a charge against the property, the owner is not personally liable for a deficiency in the amount realized from the sale of such property under tax foreclosure proceedings.<sup>1</sup>

Under a statute declaring a tax levied on property to be a debt due by the owner, the owner's personal liability is discharged by a sale of the land to the State.<sup>2</sup> Under such a statute, the taxing authority's purchase of the tax sales certificate evidences payment of the taxes as a matter of law and extinguishes the taxpayer's personal liability.<sup>3</sup>

Under a statute which requires that all taxes due and in arrears must be paid to the collector at the time that the collector executes the tax deed to the holder of the tax sale certificate, all liability of the delinquent owner for taxes due and in arrears on the property sold is extinguished.<sup>4</sup>

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Footnotes

- 1 [Board of Com'rs of Ness County v. Hopper, 110 Kan. 501, 204 P. 536 \(1922\).](#)
- 2 [Carrier Lumber & Mfg. Co. v. Quitman County, 156 Miss. 396, 124 So. 437 \(1929\).](#)
- 3 [City of Buffalo v. Cargill, 44 N.Y.2d 7, 403 N.Y.S.2d 473, 374 N.E.2d 372, 100 A.L.R.3d 581 \(1978\).](#)
- 4 [Gathwright v. Mayor and Council of City of Baltimore, 181 Md. 362, 30 A.2d 252, 145 A.L.R. 590 \(1943\).](#)

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### Part Eleven. Sale of Land for Nonpayment of Taxes

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## Research References

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2934 to 2936, 2995

### A.L.R. Library

A.L.R. Index, Tax Sales

West's A.L.R. Digest, [Taxation](#)  2934 to 2936, 2995

### Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 162](#)

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## 72 Am. Jur. 2d State and Local Taxation § 814

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## § 814. Generally

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### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2934, 2935

The judgment or decree in judicial proceedings to foreclose a tax lien or sell lands in satisfaction of delinquent taxes should follow the form prescribed by statute.<sup>1</sup> A judgment or decree against lands for nonpayment of taxes must be for an amount certain, and if it does not find the amount due in money for taxes and costs, it is fatally defective.<sup>2</sup> The validity of such judgment or decree depends on the giving of the prescribed statutory notice<sup>3</sup> to the owner of the land<sup>4</sup> or to such other person as the statutes prescribe.<sup>5</sup>

Statutes may provide for the prosecution of actions against unknown persons when it is sought to adjudge property rights.<sup>6</sup> In such situations, statutes authorize service of process by means of publication.<sup>7</sup> A judgment rendered in a suit duly instituted in accordance with the provisions of such a statute may, where the statute so declares, completely bar all persons claiming interest in the land on a sale under decree of foreclosure.<sup>8</sup> A decree of foreclosure of a tax lien against unknown owners of land, rendered upon service by publication against unknown owners and the land itself, is of no effect as against a person who was at the time in actual open and notorious adverse possession of the land and who was not made a party defendant in the action and had no notice or knowledge thereof.<sup>9</sup> Neither is the owner of land in actual possession thereof as his or her homestead affected by the judgment in a suit of which such owner had no actual notice, against an unknown owner, foreclosing a tax lien on the property.<sup>10</sup>

In jurisdictions where the procedure is by a suit in rem for taxes or for the foreclosure of the tax lien, the judgment in such a suit and the sale and deed pursuant thereto are valid as to the interests of those who were joined as defendants and duly notified and served with process even though they are invalid as to the interests of others who were not made parties or were not notified.<sup>11</sup> A Chapter 13 debtor's rights in foreclosed property will terminate prepetition upon the entry of default judgment in favor of the

taxing authority in tax foreclosure proceedings, and this is so even though the tax deed has not been executed in favor of the taxing authority prior to the filing of the debtor's bankruptcy petition.<sup>12</sup>

Recording of a judgment in one county does not create a lien on property located elsewhere.<sup>13</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

A trial court's judgment foreclosing a tax lien is valid against the parties joined in the suit, but interested parties not joined are not bound by the judgment. [Vernon's Ann.Texas Rules Civ.Proc., Rule 39\(a\)](#). [Security State Bank & Trust v. Bexar County](#), 397 S.W.3d 715 (Tex. App. San Antonio 2012).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 [Wilson v. Glos](#), 266 Ill. 392, 107 N.E. 630 (1914).
- 2 [Wilson v. Glos](#), 266 Ill. 392, 107 N.E. 630 (1914).
- 3 §§ 816 to 831.
- 4 [Woodside v. Durham](#), 317 Mo. 15, 295 S.W. 772, 53 A.L.R. 884 (1927).
- 5 [Dick v. Foraker](#), 155 U.S. 404, 15 S. Ct. 124, 39 L. Ed. 201 (1894).  
As to who is entitled to notice, see § 825.
- 6 [Am. Jur. 2d, Parties](#) § 19.
- 7 [Am. Jur. 2d, Process](#) § 182.
- 8 [Leigh v. Green](#), 193 U.S. 79, 24 S. Ct. 390, 48 L. Ed. 623 (1904).
- 9 [Harris v. Barnes](#), 137 Neb. 905, 291 N.W. 721, 128 A.L.R. 111 (1940).
- 10 [Peareson v. Branch](#), 87 S.W. 222 (Tex. Civ. App. 1905).
- 11 [Skillman v. Clardy](#), 256 Mo. 297, 165 S.W. 1050 (1914).
- 12 [In re Johnson](#), 449 B.R. 7 (Bankr. W.D. N.Y. 2011).
- 13 [U.S. v. Estate of Romani](#), 523 U.S. 517, 118 S. Ct. 1478, 140 L. Ed. 2d 710 (1998) (applying Pennsylvania law).

## 72 Am. Jur. 2d State and Local Taxation § 815

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#### D. Judgment or Decree

## § 815. Collateral attack

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### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2936, 2995

### Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 162](#) (Answer—Defense—Judgment of tax deed's validity as res judicata)

Generally, when a tax sale is based upon a decree of foreclosure rendered by a court having jurisdiction of the subject matter, it is not subject to collateral attack on account of irregularity in the proceedings.<sup>1</sup> Thus, a decree for the sale of lands for taxes, valid on its face, cannot be collaterally attacked—

— by showing that there was a material omission in the decree when it was entered, which was subsequently filled in.<sup>2</sup>

— because of a defect in the proof of service of process.<sup>3</sup>

— on the ground that the tax had in fact been paid.<sup>4</sup>

An owner may, however, collaterally attack a decree for the sale of land for nonpayment of taxes when—

— there is want of jurisdiction.<sup>5</sup>

— the judgment in foreclosure was procured by fraud.<sup>6</sup>

— a sale under judicial decree is based on an insufficient description of the land.<sup>7</sup>

— there has been no notice of the proceedings to enforce the tax lien served upon the owner of the land.<sup>8</sup>

— upon the persons who were at the time in actual possession of the land.<sup>9</sup>

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#### Footnotes

- 1 [Linn County v. Rozelle](#), 177 Or. 245, 162 P.2d 150 (1945).
- 2 [Haven v. Owen](#), 121 Mich. 51, 79 N.W. 938 (1899).
- 3 [Clay v. Bilby](#), 72 Ark. 101, 78 S.W. 749 (1904).
- 4 [Smith v. Spillman](#), 135 Ark. 279, 205 S.W. 107, 1 A.L.R. 136 (1918).
- 5 [Mickey v. Rokakis](#), 2012-Ohio-273, 2012 WL 253351 (Ohio Ct. App. 8th Dist. Cuyahoga County 2012).
- 6 [Mickey v. Rokakis](#), 2012-Ohio-273, 2012 WL 253351 (Ohio Ct. App. 8th Dist. Cuyahoga County 2012).
- 7 [Brinkley v. Halliburton](#), 129 Ark. 334, 196 S.W. 118, 1 A.L.R. 1225 (1917).  
As to whether an insufficient description of real estate in the pleadings leaves the ensuing judgment open to correction, generally, see [Am. Jur. 2d, Judgments § 147](#).
- 8 [Dick v. Foraker](#), 155 U.S. 404, 15 S. Ct. 124, 39 L. Ed. 201 (1894).  
As to notice of tax foreclosure proceedings, see §§ 816 to 831.
- 9 [Curtis v. Giff](#), 17 Neb. App. 149, 757 N.W.2d 139 (2008).

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVI. Notice of Sale or of Proceedings for Sale

##### A. General Principles

[Topic Summary](#) | [Correlation Table](#)

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### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑4148

West's Key Number Digest, [Taxation](#) 🔑2900, 2901, 2930, 2946, 2947

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West's A.L.R. Digest, [Taxation](#) 🔑2900, 2901, 2930, 2946, 2947

### Forms

[Am. Jur. Legal Forms 2d § 238:17](#)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 144, 157](#)

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## 72 Am. Jur. 2d State and Local Taxation § 816

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVI. Notice of Sale or of Proceedings for Sale

##### A. General Principles

## § 816. Generally

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### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2900](#), [2901](#), [2930](#), [2946](#), [2947](#)

### Forms

[Am. Jur. Legal Forms 2d § 238:17](#) (Notice—Sale of real property for unpaid taxes)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 144](#) (Notice—By official—Sale of real property for unpaid taxes)

A sale to enforce taxes made without notice to the owner of the land, actual or constructive, is a denial of due process of law<sup>1</sup> unless the tax foreclosure action constitutes an in rem proceeding.<sup>2</sup> Constructive notice may be given by publication after a reasonable search for the correct address is made,<sup>3</sup> and authority to give such published notice is obtained from the court.<sup>4</sup> However, it may be presumed, in the absence of evidence to the contrary, that the officer charged with the duty of selling property for unpaid taxes sent the proper notice of sale to the reputed owner of the property as required by statute, particularly where it is affirmatively established that part of the regular routine was followed.<sup>5</sup>

The legislature's power to control the method by which the State can dispose of property it acquires for delinquent taxes involves the right to determine the extent and character of the notice which agents of the State must give before the sale.<sup>6</sup>

Whether a notice is sufficient to inform persons who read it what property is intended to be sold is a mixed question of law and fact.<sup>7</sup> The trial court's conclusion that a description in a tax notice is substantially accurate and sufficient will not be disturbed on appeal if the findings to that effect are supported by the facts and the reasonable inferences of which they are susceptible.<sup>8</sup> An attack on the sufficiency of the notice may be made only in a separate action when the deed has been delivered and recorded,<sup>9</sup> but improper service cannot be cured by the service of process on a defendant in a separate action.<sup>10</sup>

The notice must be in the English language, and when it is required to be published in a newspaper, a newspaper printed in the English language is intended so that a notice in English but published in a newspaper otherwise printed in a foreign language is not a legal publication.<sup>11</sup>

A taxpayer's failure to read the mailed notice of a tax sale does not render the sale invalid.<sup>12</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

The determination of whether a party has been given the statutorily required notice of a tax sale goes to whether the trial court should order the issuance of the tax deed and not to whether the trial court has jurisdiction in the proceeding. [In re County Treasurer, 2013 IL App \(3d\) 120999, 376 Ill. Dec. 573, 999 N.E.2d 748 \(App. Ct. 3d Dist. 2013\).](#)

Homeowner, who had actual notice of tax sale purchaser's petition to foreclose right of redemption but who failed to file an answer or enter an appearance, was not entitled to notice of the hearing on the petition. [Gen.Laws 1956, § 44–9–46. Izzo v. Victor Realty, 132 A.3d 680 \(R.I. 2016\).](#)

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### Footnotes

- 1 § 817.
- 2 [Lorain Cty. Treasurer v. Schultz, 2009-Ohio-1828, 2009 WL 1035057 \(Ohio Ct. App. 9th Dist. Lorain County 2009\).](#)
- 3 [Karkoukli's, Inc. v. Dohany, 409 F.3d 279, 2005 FED App. 0220P \(6th Cir. 2005\); Board of Jefferson County Com'rs v. Adcox, 35 Kan. App. 2d 628, 132 P.3d 1004 \(2006\).](#)
- 4 [Leigh v. Green, 62 Neb. 344, 86 N.W. 1093 \(1901\), aff'd, 64 Neb. 533, 90 N.W. 255 \(1902\), aff'd, 193 U.S. 79, 24 S. Ct. 390, 48 L. Ed. 623 \(1904\).](#)
- 5 [Consolidated Motors v. Skousen, 56 Ariz. 481, 109 P.2d 41, 132 A.L.R. 1040 \(1941\).](#)
- 6 [Vosilla v. Rosado, 944 So. 2d 289 \(Fla. 2006\).](#)
- 7 [Cooley v. O'Connor, 79 U.S. 391, 20 L. Ed. 446, 1870 WL 12782 \(1870\).](#)
- 8 [City of Boston v. Boston Port Development Co., 308 Mass. 72, 30 N.E.2d 896, 133 A.L.R. 515 \(1941\).](#)
- 9 [In rem Tax Foreclosure Action No. 29 Borough of Manhattan, 115 Misc. 2d 663, 454 N.Y.S.2d 919 \(Sup 1982\).](#)
- 10 [NYCTL 1998-2 Trust v. Salem Realty, 69 A.D.3d 592, 893 N.Y.S.2d 165 \(2d Dep't 2010\).](#)
- 11 [Connors v. City of Lowell, 209 Mass. 111, 95 N.E. 412 \(1911\).](#)
- 12 [Peplinski v. County of Richland, 2000 ND 156, 615 N.W.2d 546 \(N.D. 2000\).](#)

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## 72 Am. Jur. 2d State and Local Taxation § 817

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVI. Notice of Sale or of Proceedings for Sale

##### A. General Principles

## § 817. Constitutional requirements

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### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4148

West's Key Number Digest, [Taxation](#)  2900, 2901, 2930, 2946, 2947

A landowner whose property is sold for delinquent taxes has a vested ownership interest in the property and is therefore entitled to notice of a pending tax sale<sup>1</sup> even where the taxpayer fails to comply with a statutory obligation to keep his or her address updated.<sup>2</sup> A property owner's ability to take steps to safeguard his or her interests does not relieve a municipality of its due process obligation to provide the owner with adequate notice of a pending tax sale of his or her property.<sup>3</sup>

### Observation:

The mere fact that it is common knowledge that property may become subject to government taking when taxes are not paid does not excuse the government from complying with its obligation, as a matter of due process, to provide notice before taking private property for delinquent taxes; an interested party's knowledge of delinquency in the payment of taxes is not equivalent to notice that a tax sale is pending.<sup>4</sup>

Consequently, to meet the requirements of due process in judicial proceedings for the sale of land, notice must be of such a nature as to reasonably convey the required information and must afford a reasonable time for those interested to appear.<sup>5</sup> In tax lien suits, when the party's name and address are reasonably ascertainable<sup>6</sup> through a reasonably diligent search,<sup>7</sup> constructive notice alone is not constitutionally adequate under the Due Process Clause of the 14th Amendment.<sup>8</sup> In such a situation, notice may need to be posted<sup>9</sup> and sent by mail or other means certain to ensure actual notice.<sup>10</sup> Thus, because due process protects a mortgagee's right to notice of a tax sale so that the mortgagee has the opportunity to protect its interest in the real property,<sup>11</sup> notice by publication and posting provided to a mortgagee of real property to inform the mortgagee of the sale of the mortgage property for nonpayment of taxes does not meet the requirements of the Due Process Clause if the mortgagee's name and address are reasonably ascertainable.<sup>12</sup> When the mortgagee is identified in a mortgage that is publicly recorded,<sup>13</sup> constructive notice by publication must be supplemented by notice mailed to the mortgagee's last known available address or by personal service; however, unless the mortgagee is not reasonably identifiable, constructive notice alone does not satisfy the mandate of the Due Process Clause.<sup>14</sup>

Where officials do not actually know that a property owner is incompetent or where there are no specific provisions to provide heightened notice to known incompetents, a statute providing for notice by first class mail in tax foreclosure proceedings will not violate an incompetent recipient's due process rights.<sup>15</sup> On the other hand, due process is violated by the statutory foreclosure of a tax lien on the real property of a mentally incompetent person and the subsequent sale thereof in proceedings of which notice, though in compliance with the statute, is given to the incompetent at a time when he was without the protection of a guardian, where the incompetent is wholly unable to understand the nature of the proceedings against the property and hence unable to partake of the statutory procedure for redemption or answer, and the taxing authorities know the owner was an unprotected incompetent.<sup>16</sup>

Notice of every step in the tax proceedings is not necessary; an owner is not deprived of property without due process of law if the owner has had opportunity to question the validity or the amount of the tax or assessment either before the amount is finally determined or in subsequent proceedings for its collection.<sup>17</sup> It is not essential to due process of law that notice of the tax sale be made a matter of record and be proved only by written evidence; it may be proved in any appropriate way.<sup>18</sup>

In some jurisdictions, the requisite procedures allow notice by mailing to the address contained on the tax rolls.<sup>19</sup> In other jurisdictions, however, the county treasurer may not rely solely on the tax rolls to determine owners of property who are entitled to notice prior to a tax sale; rather, the treasurer must conduct a more extensive search, including a search of title records.<sup>20</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

When mortgagee of property which is subject of pending tax sale is identified in a mortgage that is publicly recorded, constructive notice by publication must be supplemented by notice mailed to the mortgagee's last known available address, or by personal service, but unless the mortgagee is not reasonably identifiable, constructive notice alone does not satisfy due process requirements. *U.S.C.A. Const.Amend. 14*; *V.T.C.A., Tax Code § 32.065(b)(5, 6)* (2006); *V.T.C.A., Property Code § 51.002(b)*. *Ocwen Loan Servicing, LLC v. Gonzalez Financial Holdings, Inc.*, 77 F. Supp. 3d 584 (S.D. Tex. 2015), appeal dismissed, (5th Circ. 15-20176)(June 22, 2015).

Due process rights to notice of a tax sale do not vary depending on the value of one's property; so long as the nature of the property interest is substantial, no case requires the actual amount at stake to be of a particular size so long as it is not de minimis.

U.S. Const. Amend. 14. *Collector of Revenue by and through the Director of Collections for Jackson County v. Parcels of Land Encumbered with Delinquent Land Tax Liens*, 453 S.W.3d 746 (Mo. 2015).

County satisfied its constitutional due process obligations in attempting to send notice to property owner of tax foreclosure proceedings, before obtaining judgment of foreclosure due to owner's failure to pay property taxes, even though county did not send notice to owner's attorney at address listed in deed conveying the property to owner; it was not possible to discern from face of the deed that attorney represented owner at time of foreclosure proceedings or otherwise had an interest in the property, attorney's address was not owner's tax billing address at time property was conveyed, owner was responsible for updating its address with county, but nearly three years passed without owner having discovered that it had failed to receive and/or pay its tax bills for the property, and owner did not inquire as to whether county had actually received notice of its change of address. U.S. Const. Amend. 14; N.Y. RPTL § 1125(1)[d]. *Landing Woods of Ulster, LLC v. County of Ulster*, 156 A.D.3d 1009, 66 N.Y.S.3d 561 (3d Dep't 2017).

Former property owner was not deprived of due process by virtue of nonjoinder in tax-sale purchaser's action to compel county deputy commissioner to issue deed for property, where former owner had more than reasonable opportunity to avail itself of statutory remedy of redemption, and redemption period was prolonged by former owner's bankruptcy filing, but even as of date it sought intervention in purchaser's action, and up until date that deputy commissioner executed and delivered deed to purchaser, former owner declined to simply pay its delinquent taxes to redeem property. U.S. Const. Amend. 14; W. Va. Code Ann. §§ 11A-3-56, 11A-3-60; W. Va. R. Civ. P. 19. *State ex rel. Southland Properties, LLC v. Janes*, 811 S.E.2d 273 (W. Va. 2018).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 Dawson v. Saada, 608 So. 2d 806 (Fla. 1992).
- 2 Jones v. Flowers, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006).
- 3 In re City of Rochester, 92 A.D.3d 1297, 939 N.Y.S.2d 214 (4th Dep't 2012).
- 4 Jones v. Flowers, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006).
- 5 Del Castillo v. McConnico, 168 U.S. 674, 18 S. Ct. 229, 42 L. Ed. 622 (1898); LVF Realty Co., Inc. v. Harrington, 146 A.D.2d 607, 536 N.Y.S.2d 840 (2d Dep't 1989) (holding notice provisions constitutionally inadequate).
- 6 Weatherly v. Optimum Asset Management, Inc., 928 So. 2d 118 (La. Ct. App. 1st Cir. 2005); Wilson v. Blount County, 207 S.W.3d 741 (Tenn. 2006).
- 7 Weatherly v. Optimum Asset Management, Inc., 928 So. 2d 118 (La. Ct. App. 1st Cir. 2005).
- 8 Wilson v. Blount County, 207 S.W.3d 741 (Tenn. 2006).
- 9 Jones v. Flowers, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006).
- 10 Vincson, Inc. v. Ingram, 835 So. 2d 813 (La. Ct. App. 1st Cir. 2002).
- 11 RWR Properties, Inc. v. Mid-State Trust VIII, 102 Ark. App. 115, 282 S.W.3d 297 (2008).
- 12 Mennonite Bd. of Missions v. Adams, 462 U.S. 791, 103 S. Ct. 2706, 77 L. Ed. 2d 180 (1983).
- 13 Weatherly v. Optimum Asset Management, Inc., 928 So. 2d 118 (La. Ct. App. 1st Cir. 2005) (publicly recorded instrument triggers duty on part of government); In re Foreclosure of Liens For Delinquent Land Taxes By Action In Rem, 190 S.W.3d 416 (Mo. Ct. App. W.D. 2006) (constitutionally protected interest to written notice).
- 14 Mennonite Bd. of Missions v. Adams, 462 U.S. 791, 103 S. Ct. 2706, 77 L. Ed. 2d 180 (1983).
- 15 Farbotko v. Clinton County, NY, 168 F. Supp. 2d 31 (N.D. N.Y. 2001).
- 16 Covey v. Town of Somers, 351 U.S. 141, 76 S. Ct. 724, 100 L. Ed. 1021 (1956).
- 17 Palmer v. McMahon, 133 U.S. 660, 10 S. Ct. 324, 33 L. Ed. 772 (1890).
- 18 Straus v. Foxworth, 231 U.S. 162, 34 S. Ct. 42, 58 L. Ed. 168 (1913).

19                                      [In re County of Sullivan, 39 A.D.3d 1095, 835 N.Y.S.2d 482 \(3d Dep't 2007\).](#)  
20                                      [Bell v. Anderson, 109 Nev. 363, 849 P.2d 350 \(1993\).](#)

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## 72 Am. Jur. 2d State and Local Taxation § 818

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVI. Notice of Sale or of Proceedings for Sale

##### A. General Principles

## § 818. Constitutional requirements—Effect of noncompliance

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4148

West's Key Number Digest, [Taxation](#)  2900, 2901, 2930, 2946, 2947

### Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 157](#) (Complaint, petition, or declaration—Allegation—Lack of proper notice of tax sale)

Statutory requirements of notice of a tax sale are imperative and must be complied with;<sup>1</sup> in the absence of notice to the tax delinquent, the sale is void<sup>2</sup> and passes no title to the tax purchaser.<sup>3</sup> Except where a tax foreclosure action constitutes an in rem proceeding,<sup>4</sup> failure to give the required notice is a jurisdictional defect.<sup>5</sup>

### Observation:

At least one court has held that defects in following the notice provisions of a tax sale statute may give the injured party a claim for damages but will not render the tax sale or deed void.<sup>6</sup>



## CUMULATIVE SUPPLEMENT

### Cases:

Statutory post-tax sale notices provided to mortgagee did not correct the constitutional due process violation of lack of sufficient notice prior to the sale; receipt of only a post-tax sale notice deprived mortgagee of the opportunity to protect its property interest prior to and at the tax sale, including the opportunity to purchase the property itself. [U.S.C.A. Const.Amend. 14](#); [West's A.I.C. 6-1.1-24-3](#), [6-1.1-25-4.5](#), [6-1.1-25-4.6](#). [M & M Inv. Group, LLC v. Ahlemeyer Farms, Inc.](#), 972 N.E.2d 889 (Ind. Ct. App. 2012).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 [RWR Properties, Inc. v. Mid-State Trust VIII](#), 102 Ark. App. 115, 282 S.W.3d 297 (2008).
- 2 [J.A. Tobin Const. Co. v. Williams](#), 46 Kan. App. 2d 593, 263 P.3d 835 (2011); [C & C Energy, L.L.C. v. Cody Investments, L.L.C.](#), 41 So. 3d 1134 (La. 2010); [In re Upset Sale Tax Claim Bureau McKean County on September 10, 2007](#), 965 A.2d 1244 (Pa. Commw. Ct. 2009).
- 3 [Tanner v. Florence County Treasurer](#), 336 S.C. 552, 521 S.E.2d 153 (1999).  
As to substantial requirements of the statute governing the contents of the notice as being sufficient, see § 820.
- 4 [Lorain Cty. Treasurer v. Schultz](#), 2009-Ohio-1828, 2009 WL 1035057 (Ohio Ct. App. 9th Dist. Lorain County 2009).
- 5 [Garcia v. Ted Parks, L.L.C.](#), 2008 OK 90, 195 P.3d 1269 (Okla. 2008).
- 6 [GE Capital Mortg. Services, Inc. v. Clack](#), 271 Ga. 82, 515 S.E.2d 619 (1999).

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## 72 Am. Jur. 2d State and Local Taxation § 819

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVI. Notice of Sale or of Proceedings for Sale

##### A. General Principles

## § 819. Right of person receiving due notice to object to insufficiency of notice given another

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4148

West's Key Number Digest, [Taxation](#)  2900, 2901, 2930, 2946, 2947

### A.L.R. Library

[Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party, 45 A.L.R.4th 447](#)

[Property owner's liability for unpaid taxes following acquisition of property by another at tax sale, 100 A.L.R.3d 593](#)

According to some courts, where one having an interest in or occupying land has due notice of an approaching tax sale thereof, or of some other step in a tax proceeding precedent to such a sale, and where another interested party is not given due notice, although such failure renders the tax sale and the consequent tax deed invalid as to the party not served, it does not prevent the sale and deed from being valid and effective in so far as they relate to the one who was duly served.<sup>1</sup> According to other courts, the statutory notice provisions are mandatory, and strict, or at least substantial, and compliance therewith is essential to the validity of the tax proceeding; thus, failure to give due notice to one party entitled thereto may be taken advantage of by another party even though the latter has received due notice.<sup>2</sup>

Footnotes

- 1 Skillman v. Clardy, 256 Mo. 297, 165 S.W. 1050 (1914); Loper v. Meshaw Lumber Co., 104 S.W.2d 597 (Tex. Civ. App. Eastland 1937), writ dismissed.
- 2 Burks v. Hedinger, 167 N.W.2d 650 (Iowa 1969); Brousseau v. Conklin, 301 Mich. 241, 3 N.W.2d 260 (1942).

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## 72 Am. Jur. 2d State and Local Taxation Eleven LVI B Refs.

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVI. Notice of Sale or of Proceedings for Sale

#### B. Contents of Notice

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Taxation](#) 🔑 [2946](#), [2948](#), [2949](#)

### A.L.R. Library

A.L.R. Index, Tax Sales

West's A.L.R. Digest, [Taxation](#) 🔑 [2946](#), [2948](#), [2949](#)

### Forms

[Am. Jur. Legal Forms 2d § 238:17](#)

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## 72 Am. Jur. 2d State and Local Taxation § 820

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVI. Notice of Sale or of Proceedings for Sale

#### B. Contents of Notice

## § 820. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2946](#), [2948](#), [2949](#)

### A.L.R. Library

[Validity of notice of tax sale or of tax sale proceeding which fails to state tax year or kind or type of taxes covered by tax assessments, 43 A.L.R.2d 988](#)

### Forms

[Am. Jur. Legal Forms 2d § 238:17](#) (Notice—Sale of real property for unpaid taxes)

The notice of a tax sale should—

— designate the time when the sale is to take place.<sup>1</sup>

— designate the place where the sale is to take place.<sup>2</sup>

— designate the tax on account of which the sale is to be made.<sup>3</sup>

— describe the land to be sold.<sup>4</sup>

— set forth the name of the person assessed, or if the tax is assessed directly upon the land, the name of the owner of the land.<sup>5</sup>

— state the kind or type of taxes due.<sup>6</sup>

— state the year of assessment of the taxes due.<sup>7</sup>

Substantial rather than exact and literal compliance with statutory requirements of this sort is all that is ordinarily required.<sup>8</sup>

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#### Footnotes

- 1 [Foreclosure of Liens for Delinquent Taxes v. Parcels of Land encumbered with Delinquent Tax Liens, 2003-Ohio-1760, 2003 WL 1795569 \(Ohio Ct. App. 2d Dist. Clark County 2003\).](#)
- 2 [Foreclosure of Liens for Delinquent Taxes v. Parcels of Land encumbered with Delinquent Tax Liens, 2003-Ohio-1760, 2003 WL 1795569 \(Ohio Ct. App. 2d Dist. Clark County 2003\).](#)
- 3 [Gage v. Bani, 141 U.S. 344, 12 S. Ct. 22, 35 L. Ed. 776 \(1891\).](#)
- 4 [§ 821.](#)
- 5 [§ 823.](#)
- 6 [Gage v. Bani, 141 U.S. 344, 12 S. Ct. 22, 35 L. Ed. 776 \(1891\); Gaither v. Lager, 2 Ill. 2d 293, 118 N.E.2d 4, 43 A.L.R.2d 980 \(1954\).](#)
- 7 [Gaither v. Lager, 2 Ill. 2d 293, 118 N.E.2d 4, 43 A.L.R.2d 980 \(1954\).](#)
- 8 [Whitney v. Bailey, 88 Minn. 247, 92 N.W. 974 \(1903\).](#)

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## 72 Am. Jur. 2d State and Local Taxation § 821

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVI. Notice of Sale or of Proceedings for Sale

#### B. Contents of Notice

## § 821. Description of land to be sold

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2946](#), [2948](#), [2949](#)

The notice of a tax sale must describe the property to be sold with sufficient<sup>1</sup> or reasonable<sup>2</sup> certainty so that a person of ordinary intelligence can identify the property sought to be foreclosed.<sup>3</sup> An insufficient description renders the tax sale certificate and tax deed based thereon void.<sup>4</sup> The notice should contain the dimensions or boundaries of the lot so as to convey some information about the property's value.<sup>5</sup> The notice as a whole must be looked to in order to determine the sufficiency of the description.<sup>6</sup>

Whether the description in a tax notice is sufficient is a question of fact.<sup>7</sup> Generally, if the description is sufficient to notify the owner, it is sufficient to notify the public.<sup>8</sup> The description need not be so detailed as to point out visually its precise boundaries so that a stranger unacquainted with the locality and the neighbors could find it without inquiry.<sup>9</sup>

A description of the property that merely indicates that the subject property is part of a larger tract, without greater certainty, is not sufficient.<sup>10</sup>

Descriptions by lot or block numbers may be insufficient in the absence of any reference to any map or plat on which such lot or block numbers could be found.<sup>11</sup> Such a description may, however, be sufficient.<sup>12</sup>

A statute providing for the publication of notices of sales of land for delinquent taxes which does not require the publication of the descriptions of the lands, but permits the notices to state merely that a list of the lands assessed is on file in the office of the county treasurer, unconstitutionally deprives the owner of property without due process of law.<sup>13</sup>

Footnotes

- 1                   S.I. Securities v. Powless, 403 Ill. App. 3d 426, 343 Ill. Dec. 1, 934 N.E.2d 1 (5th Dist. 2010).
- 2                   Stadium West Properties, L.L.C. v. Johnson, 133 S.W.3d 128 (Mo. Ct. App. W.D. 2004).
- 3                   Smith v. Cliffs on the Bay Condominium Ass'n, 245 Mich. App. 73, 626 N.W.2d 905 (2001).  
                  As to a description by reference, see § 822.
- 4                   Keely v. Sanders, 99 U.S. 441, 25 L. Ed. 327, 1878 WL 18260 (1878); Wingard v. Heinkel, 70 Wash. 2d 730, 424 P.2d 1010 (1967).
- 5                   Cooley v. O'Connor, 79 U.S. 391, 20 L. Ed. 446, 1870 WL 12782 (1870); Chamberlain v. Davis, 1942 OK 286, 191 Okla. 457, 130 P.2d 848 (1942).
- 6                   Knapp v. Josephine County, 192 Or. 327, 235 P.2d 564 (1951).
- 7                   Sac Downtown Ltd. Partnership v. Kahn, 123 Wash. 2d 197, 867 P.2d 605 (1994).
- 8                   Keely v. Sanders, 99 U.S. 441, 25 L. Ed. 327, 1878 WL 18260 (1878); City of Centralia v. Miller, 31 Wash. 2d 417, 197 P.2d 244 (1948).
- 9                   City of Centralia v. Miller, 31 Wash. 2d 417, 197 P.2d 244 (1948).
- 10                  Wenatchee Reclamation Dist. v. Mustell, 102 Wash. 2d 721, 684 P.2d 1275 (1984), opinion modified, (Oct. 9, 1984).
- 11                  Conners v. City of Lowell, 209 Mass. 111, 95 N.E. 412 (1911).  
                  As to a description by reference, see § 822.
- 12                  Chester Motors, Inc. v. Koledo, 146 Vt. 357, 503 A.2d 551 (1985).
- 13                  In re Auditor General, 275 Mich. 462, 266 N.W. 464, 107 A.L.R. 279 (1936).

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## 72 Am. Jur. 2d State and Local Taxation § 822

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVI. Notice of Sale or of Proceedings for Sale

#### B. Contents of Notice

## § 822. Description of land to be sold—By map, plat, or survey

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2946](#), [2948](#), [2949](#)

Reference in the notice of sale to other sources of information may aid the description of land in a notice of sale for nonpayment of taxes.<sup>1</sup> A statute may authorize a description by reference to map or plat.<sup>2</sup> Such reference is sufficient if it enables prospective purchasers to identify the property and enables persons of ordinary intelligence to locate the property<sup>3</sup> without the assistance of a conveyancer or resort to guesses or inferences.<sup>4</sup> A description according to regular government survey by sections and subdivisions is sufficient.<sup>5</sup>

A designation of a plat is sufficient although the place where it can be found is not given where it is in fact recorded with the county plat records and where the description was not calculated to mislead.<sup>6</sup> A reference to the assessor's plan on file in the assessor's office and open to public inspection at reasonable times affords definite and accurate description; although no metes and bounds are given, there is no reference to any other plan, and the plan designated is not on record in the registry of deeds.<sup>7</sup>

The map or plat itself must be sufficiently definitely identified, but it is sufficient if the reference reasonably identifies it; a reference to a plat by the name by which it is commonly known is sufficient even though that name is not the name by which it is officially known.<sup>8</sup> Even where there are two maps or plats on record having the same or similar names, inaccurate references to a map or plat may be sufficient where other evidence points out the one on which the property was shown.<sup>9</sup>

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Footnotes

- 1 [Felker v. Board of Com'rs of Paving Imp. Dist. No. 13, 202 Ark. 304, 150 S.W.2d 55 \(1941\).](#)
- 2 [Choctaw, O. & G. R. Co. v. Mackey, 256 U.S. 531, 41 S. Ct. 582, 65 L. Ed. 1076 \(1921\).](#)
- 3 [Napier v. Runkel, 9 Wash. 2d 246, 114 P.2d 534, 137 A.L.R. 175 \(1941\).](#)
- 4 [Consolidated Motors v. Skousen, 56 Ariz. 481, 109 P.2d 41, 132 A.L.R. 1040 \(1941\)](#) (holding description sufficient).
- 5 [Bartel v. Ingram, 178 Ark. 699, 11 S.W.2d 488 \(1928\).](#)
- 6 [Free v. Greene, 175 Md. 36, 199 A. 857, 117 A.L.R. 717 \(1938\).](#)
- 7 [Felker v. Board of Com'rs of Paving Imp. Dist. No. 13, 202 Ark. 304, 150 S.W.2d 55 \(1941\).](#)
- 8 [Medaris v. Tracey, 1934 OK 747, 170 Okla. 113, 39 P.2d 30 \(1934\).](#)
- 9 [Standard Drug Co. v. Pierce, 111 Miss. 354, 71 So. 577 \(1916\).](#)

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## 72 Am. Jur. 2d State and Local Taxation § 823

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVI. Notice of Sale or of Proceedings for Sale

#### B. Contents of Notice

## § 823. Designation of delinquent taxpayer

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2946](#), [2948](#)

The notice of a tax sale should set forth the name of the person to whom the tax for the satisfaction of which the sale is to be made was assessed, or if the tax was assessed directly upon the land, the notice should state the name of the person designated as the owner.<sup>1</sup> A notice of the sale of land belonging to a partnership is not necessarily defective because it designates the owners of the land by the name of their firm, without specifying the individuals who compose it.<sup>2</sup> If the owners are unknown, that fact must be stated.<sup>3</sup>

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### Footnotes

- <sup>1</sup> [Holroyd v. Pumphrey](#), 59 U.S. 69, 18 How. 69, 15 L. Ed. 264, 1855 WL 8285 (1855); [Connors v. City of Lowell](#), 209 Mass. 111, 95 N.E. 412 (1911).
- <sup>2</sup> [Ord v. Neiswanger](#), 81 Kan. 63, 105 P. 17 (1909).
- <sup>3</sup> [Jones v. Seattle Brick & Tile Co.](#), 56 Wash. 166, 105 P. 238 (1909).

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## 72 Am. Jur. 2d State and Local Taxation § 824

American Jurisprudence, Second Edition | May 2021 Update

### State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

### Part Eleven. Sale of Land for Nonpayment of Taxes


#### LVI. Notice of Sale or of Proceedings for Sale

#### B. Contents of Notice

## § 824. Designation of delinquent taxpayer—Identification

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2946](#), [2948](#)

### A.L.R. Library

[Effect of misnomer of landowner or delinquent taxpayer in notice, advertisement, etc., of tax foreclosure or sale, 43 A.L.R.2d 967](#)

In an action to sell property for delinquent taxes, the name of the landowner must be stated with sufficient accuracy to inform the landowner that he or she is the owner of land with regard to which tax proceedings have been instituted.<sup>1</sup> Absolute accuracy in spelling names in notices published for tax sales is not required.<sup>2</sup> Thus, a misnomer renders a tax sale voidable rather than void.<sup>3</sup> A misspelling will not render a notice of tax sale void where: (1) the name, as misspelled, is essentially the same as the name correctly spelled; (2) the misspelled name adequately identifies the owner of the property being sold; and (3) the owner is not prejudiced by the misspelling.<sup>4</sup> Moreover, where the misnomer in the notice is merely an immaterial variance from the landowner's true name and is not such as could mislead the landowner, the notice does not render the sale void or voidable.<sup>5</sup> A notice does not render the sale void or voidable where—

— a misspelling of a name has the same pronunciation as the landowner's true name.<sup>6</sup>

— a statute cures the defect.<sup>7</sup>

— the misnomer occurred as a result of the landowner's own act in submitting for recording a deed in which his name was not fully legible.<sup>8</sup>

In one jurisdiction, in a proceeding to sell property for delinquent taxes, the use of an initial, rather than the given or Christian name, to designate the landowner in the publication notice or process invalidates the sale where the record title to the property describes the owner by the use of his or her given or Christian name.<sup>9</sup> The landowner who uses initials may, however, be estopped to set up the irregularity as by putting on record a deed in which he or she is so designated.<sup>10</sup> However, the use of one's initials in a deed other than the deed to the property against which the proceedings are instituted<sup>11</sup> or, after the tax sale, in a deed to the same property,<sup>12</sup> will not estop the owner from attacking the validity of the proceedings.

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#### Footnotes

- 1 Marx v. Hanthorn, 148 U.S. 172, 13 S. Ct. 508, 37 L. Ed. 410 (1893); Wells v. Thomas, 89 So. 2d 259 (Fla. 1956).
- 2 Aldhelm, Inc. v. Schuylkill County Tax Claim Bureau, 879 A.2d 400 (Pa. Commw. Ct. 2005).
- 3 Ditmore Land & Cattle Co. v. Hicks, 282 S.W.2d 753 (Tex. Civ. App. Eastland 1955), judgment modified on other grounds, 155 Tex. 596, 290 S.W.2d 499 (1956).
- 4 Aldhelm, Inc. v. Schuylkill County Tax Claim Bureau, 879 A.2d 400 (Pa. Commw. Ct. 2005).
- 5 Norend Realty Corp. v. City of New York, 20 A.D.2d 925, 249 N.Y.S.2d 849 (2d Dep't 1964).
- 6 City of Houston v. Darland, 264 S.W.2d 783 (Tex. Civ. App. Galveston 1954), writ refused n.r.e.
- 7 City of Philadelphia v. Sulzer's Estate, 342 Pa. 37, 20 A.2d 233 (1941).
- 8 White v. Himmelberger-Harrison Lumber Co., 240 Mo. 13, 139 S.W. 553 (1911).
- 9 Proctor v. Nance, 220 Mo. 104, 119 S.W. 409 (1909).
- 10 Mosely v. Reily, 126 Mo. 124, 28 S.W. 895 (1894).
- 11 Stevenson v. Brown, 264 Mo. 182, 174 S.W. 414 (1915).
- 12 Woodside v. Durham, 317 Mo. 15, 295 S.W. 772, 53 A.L.R. 884 (1927).

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## 72 Am. Jur. 2d State and Local Taxation Eleven LVI C Refs.

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVI. Notice of Sale or of Proceedings for Sale

##### C. Persons Entitled to Notice

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Taxation](#) 🔑 2946

### A.L.R. Library

A.L.R. Index, Tax Sales

West's A.L.R. Digest, [Taxation](#) 🔑 2946

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## 72 Am. Jur. 2d State and Local Taxation § 825

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVI. Notice of Sale or of Proceedings for Sale

##### C. Persons Entitled to Notice

## § 825. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2946

The statutes may require that the following persons receive notice of a tax sale:

- the tax delinquent<sup>1</sup>
- the owner of the land<sup>2</sup>
- the record owner of the land<sup>3</sup>
- the grantee under the last recorded deed<sup>4</sup>
- the person to whom the land was last assessed<sup>5</sup>
- remaindermen where property owned by a life tenant is the subject of the sale<sup>6</sup>
- known or readily ascertainable judgment lienholders<sup>7</sup>
- judgment creditors after the judgment has been recorded<sup>8</sup>
- the estate and heirs of a deceased property owner<sup>9</sup>

- the holder of a right of first refusal to purchase property under a recorded deed<sup>10</sup>
- a terre-tenant<sup>11</sup>
- a mortgagee or other person having interest in the land<sup>12</sup>

On the other hand, an assignee of a deed of trust note will not be entitled to notice of a tax sale unless it also has a validly recorded assignment of the deed of trust at the time when such notice is given.<sup>13</sup>

Where property that is the subject of a tax sale is owned by a husband and wife as tenants by the entireties, one jointly addressed notice of the tax sale is not sufficient to satisfy the statute requiring that notice of the sale be sent to each owner.<sup>14</sup> Notice to a deceased taxpayer is not notice to his or her heirs of an impending tax sale.<sup>15</sup>

If a statutory requirement regarding the person to be notified of the pending tax sale is not complied with, the sale and the tax deed are void or at least voidable at the suit of the owner.<sup>16</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Under South Carolina law, the fact that the defaulting taxpayer has actual notice of the impending tax sale is insufficient to uphold a tax sale absent strict compliance with statutory requirements. [S.C.Code 1976, § 12–51–40](#). [Baker v. Denton](#), 37 F. Supp. 3d 794 (D.S.C. 2014).

The State Constitution requires the tax collector to provide notice of the tax delinquency and the tax sale of real property to all owners of record of any interest in the property. [LSA–Const. Art. 7, § 25\(A\)](#). [Smitko v. Gulf South Shrimp, Inc.](#), 94 So. 3d 750 (La. 2012).

Tax sale purchasers are not the proper parties to raise issues concerning notice provisions of tax sales statutes. [West's Ann.Md.Code, Tax–Property, § 14–839](#). [Kona Properties, LLC v. W.D.B. Corp., Inc.](#), 224 Md. App. 517, 121 A.3d 191 (2015).

Secretary of State gave sufficient notice to property owner that the property had been forfeited to the state for failure to pay taxes, despite argument that Secretary failed to give such notice during the 30-day waiting period for a post-forfeiture application to purchase, and thus the purported lack of notice could not be a reason for former owner to have land patents issued after property's sale set aside; Secretary, after the property in question had been certified to the state, had sent notices informing former owner that the property that had been forfeited to the state and instructed former owner to contact the Secretary if interested in purchasing the property. 1 [Miss. Admin. Code Pt. 11, R. 1.6\(C\)](#). [Green Hills Development Company, LLC v. Secretary of State](#), 275 So. 3d 1077 (Miss. 2019).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 [Cordova v. State, Taxation and Revenue, Property Tax Div.](#), 136 N.M. 713, 2005-NMCA-009, 104 P.3d 1104 (Ct. App. 2004).
- 2 [Citimortgage, Inc. v. KDR Investments, LLP](#), 954 A.2d 755 (Pa. Commw. Ct. 2008).



- 3                   In re Cook County Treasurer, 185 Ill. 2d 428, 235 Ill. Dec. 910, 706 N.E.2d 465 (1998).
- 4                   Duck v. McQueen, 263 Mich. 325, 248 N.W. 637 (1933).
- 5                   Sandberg v. Murphy, 134 Wash. 685, 236 P. 106 (1925).
- 6                   Robert P. Quinn Trust v. Ruiz, 723 A.2d 1127 (R.I. 1999).
- 7                   First Nat. Bank of Eden v. Meyer, 476 N.W.2d 267 (S.D. 1991).
- 8                   U.S. v. Estate of Romani, 523 U.S. 517, 118 S. Ct. 1478, 140 L. Ed. 2d 710 (1998) (applying Pennsylvania law).
- 9                   Sanders v. Ryles, 318 Ark. 418, 885 S.W.2d 888 (1994).
- 10                  Ayres v. Townsend, 324 Md. 666, 598 A.2d 470 (1991).
- 11                  Hess v. Westerwick, 366 Pa. 90, 76 A.2d 745 (1950).
- 12                  Southwestern Commercial Capital, Inc. v. Cornett Packing Co., 2000 OK 19, 997 P.2d 849 (Okla. 2000) (even if the mortgagee has knowledge that the mortgagor is in default on taxes).  
As to who are necessary parties in a judicial proceeding to enforce or foreclose a general tax lien, see § 792.  
As to persons to whom notice to redeem from tax sale must be given, see § 916.
- 13                  In re Tucker, 441 B.R. 638 (Bankr. W.D. Mo. 2010).
- 14                  Teslovich v. Johnson, 486 Pa. 622, 406 A.2d 1374 (1979).
- 15                  Moore v. Government of Dist. of Columbia, 332 A.2d 749 (D.C. 1975) (noting that this rule presupposes that the tax assessor knows or can reasonably determine that the taxpayer of record is deceased).
- 16                  Slocum v. Peterson, 131 Wash. 61, 229 P. 20, 40 A.L.R. 1071 (1924).

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## 72 Am. Jur. 2d State and Local Taxation § 826

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVI. Notice of Sale or of Proceedings for Sale

##### C. Persons Entitled to Notice

## § 826. Who is an "owner" or "person in possession"

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2946

### A.L.R. Library

[Easement, servitude, or covenant as affected by sale for taxes, 7 A.L.R.5th 187](#)

"Owner," as used in a statute governing the giving of notice of a tax sale, means the person appearing on the assessment list as the owner of the property.<sup>1</sup> Where the owner is entitled to notice, notice to an agent of the owner is insufficient.<sup>2</sup> Under a provision requiring notice to the owner of a purchase of property at a tax sale, notice to an owner who is in actual possession of the property is required even though it was not assessed in such owner's name.<sup>3</sup> Notice given to a former owner and not to the owner at the time that the notice was given or to the person last paying the taxes on the land renders a tax deed void under a statute requiring notice of application for tax deeds to be mailed to the "owner of the lands" or, if the owner is unknown, then "to the person last paying taxes on said property."<sup>4</sup>

The owner upon whom notice must be served if possible is the owner of the fee only; notice need not be served upon the owner of every estate and interest in the land.<sup>5</sup> When, however, the land is owned in fee by tenants in common, notice to one of them is not sufficient, and if notice is not given to all of them, the sale is void at least as against those who have not been notified.<sup>6</sup> However, where only one tenant in common's individual interest is the subject of tax foreclosure proceedings, the

other cotenants are not entitled to notice of the proceedings.<sup>7</sup> The owner of an easement over the land subject to the tax sale is not entitled to notice of the sale where the sale does not extinguish the easement.<sup>8</sup>

A requirement that notice of an intended sale under a delinquent tax certificate should be given to the "record owner" refers to the owner appearing as such on the records compiled under the recording act and not to the person in whose name the property appeared on the tax rolls and who was named in the certificate as owner or reputed owner.<sup>9</sup> However, a statute relating to the resale of land acquired for delinquent taxes, providing that the publication of notice must contain the name of the owner of said real estate, as shown by the last tax rolls, does not require publication in the name of the true or record owner; rather, the naming of the owner as shown by the tax rolls is sufficient for the validity of the notice.<sup>10</sup>

Under a statute requiring notification of the person in possession of the real estate, the possession need not be actual but may be inferred from the circumstances even if observation of the premises would not determine who was in possession.<sup>11</sup>

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#### Footnotes

- 1 Carney v. Bigam, 51 Wash. 452, 99 P. 21 (1909).
- 2 Abromatis v. Amos, 127 Md. 394, 96 A. 554 (1916).
- 3 Glos v. Boettcher, 193 Ill. 534, 61 N.E. 1017 (1901).
- 4 Hightower v. Hogan, 69 Fla. 86, 68 So. 669 (1915).
- 5 Leigh v. Green, 62 Neb. 344, 86 N.W. 1093 (1901), aff'd, 64 Neb. 533, 90 N.W. 255 (1902), aff'd, 193 U.S. 79, 24 S. Ct. 390, 48 L. Ed. 623 (1904).
- 6 Teslovich v. Johnson, 486 Pa. 622, 406 A.2d 1374 (1979).
- 7 In re Foreclosure of Liens, 130 Wash. 2d 142, 922 P.2d 73 (1996).
- 8 Tax Lien Co. of New York v. Schultze, 213 N.Y. 9, 106 N.E. 751 (1914).
- 9 Okanogan Power & Irrigation Co. v. Quackenbush, 107 Wash. 651, 182 P. 618, 5 A.L.R. 966 (1919).
- 10 Brewer v. Davidson, 1945 OK 201, 195 Okla. 654, 163 P.2d 987 (1945).
- 11 Burks v. Hedinger, 167 N.W.2d 650 (Iowa 1969).

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## 72 Am. Jur. 2d State and Local Taxation Eleven LVI D Refs.

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVI. Notice of Sale or of Proceedings for Sale

#### D. Types of Notice

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 4148

West's Key Number Digest, [Taxation](#) 🔑 2950 to 2952

### A.L.R. Library

A.L.R. Index, Tax Sales

West's A.L.R. Digest, [Constitutional Law](#) 🔑 4148

West's A.L.R. Digest, [Taxation](#) 🔑 2950 to 2952

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## 72 Am. Jur. 2d State and Local Taxation § 827

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVI. Notice of Sale or of Proceedings for Sale

#### D. Types of Notice

## § 827. Personal notice

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 4148

West's Key Number Digest, [Taxation](#) 🔑 2950

Statutes may require that notice of the sale be served personally upon the owner of the property<sup>1</sup> if such owner's name and address are readily ascertainable.<sup>2</sup> In such case, a tax sale will be void<sup>3</sup> or invalid<sup>4</sup> when the notice has not been personally served unless it affirmatively appears that the owner could not by diligent inquiry be found,<sup>5</sup> or the owner's actual knowledge of the sale waived the personal service requirement.<sup>6</sup>

### Observation:

A statute providing for personal notice of the commencement of a tax lien foreclosure proceeding may satisfy due process where it requires the notice of foreclosure to be served by certified mail even though the statute does not require a signed certified mail receipt from the property owner as part of the certified mailing.<sup>7</sup>

Under a statute allowing service of notice by publication when the owner of the land is not known, the owner is deemed to be "not known" when the holder of the tax certificate is unable, by reasonable diligence and inquiry in the neighborhood of the land,

to learn the whereabouts of persons appearing to have estates therein or when he or she is unable to ascertain who have such estates.<sup>8</sup> Similarly, the phrase "for any reason" in a statute providing for service by publication if the sheriff is unable for any reason to effect service upon any person required to be served notice to a tax sale is construed to mean that notice by publication is permissible only if the sheriff's inability to effect personal service satisfies the constitutional mandate of due process.<sup>9</sup>

Service of the notice by handing it to the spouse of the owner is not sufficient personal service upon the owner unless it is done in the owner's presence.<sup>10</sup> Furthermore, service of notice on one spouse concerning an impending tax sale of property owned by the spouses as tenants in the entirety, where the spouses are separated and there is no agreement authorizing one spouse to sign for the mail of the other, may indicate a failure of personal service.<sup>11</sup> Additionally, a separated spouse's failure to notify the agency responsible for tax sales of private properties of a change of his or her address will not excuse the agency from the duty to undertake a reasonable effort to locate the spouse where the spouse owns the property in question with the other spouse as tenants in the entirety.<sup>12</sup>

Where the owner testifies that he or she did not receive notice, the evidence should be clear and convincing that it was given as required by law before the tax title is held to be paramount.<sup>13</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Service of notice of foreclosure of tax lien by certified mail to deceased property owner at his last known address and by personal service on resident of property at her place of employment was sufficient to comply with statutory requirements; service by certified mail on deceased owner's children or his estate was not required. [NDCC § 57-28-04](#). [Estate of Glasoe v. Williams County, N.D., 2016 ND 18, 874 N.W.2d 311 \(N.D. 2016\)](#).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 [J.A. Tobin Const. Co. v. Williams, 46 Kan. App. 2d 593, 263 P.3d 835 \(2011\); Showell v. Brosten, 2008 MT 261, 345 Mont. 108, 189 P.3d 1210 \(2008\)](#).
- 2 [J.A. Tobin Const. Co. v. Williams, 46 Kan. App. 2d 593, 263 P.3d 835 \(2011\)](#).
- 3 [J.A. Tobin Const. Co. v. Williams, 46 Kan. App. 2d 593, 263 P.3d 835 \(2011\); Rebuild America, Inc. v. Norris, 64 So. 3d 480 \(Miss. 2011\)](#).
- 4 [McKelvey v. Westmoreland County Tax Claim Bureau, 983 A.2d 1271 \(Pa. Commw. Ct. 2009\), appeal denied, 608 Pa. 672, 13 A.3d 481 \(2010\)](#).
- 5 [Wilson v. Glos, 266 Ill. 392, 107 N.E. 630 \(1914\)](#).
- 6 [In re Sale of Real Estate by Lackawanna County Tax Claim Bureau, 986 A.2d 213 \(Pa. Commw. Ct. 2009\)](#).
- 7 [Tupaz v. Clinton County, New York, 499 F. Supp. 2d 182 \(N.D. N.Y. 2007\), judgment aff'd, 541 F.3d 464 \(2d Cir. 2008\)](#).
- 8 [Leigh v. Green, 64 Neb. 533, 90 N.W. 255 \(1902\), aff'd, 193 U.S. 79, 24 S. Ct. 390, 48 L. Ed. 623 \(1904\)](#).
- 9 [Hamilton v. Renewed Hope, Inc., 277 Ga. 465, 589 S.E.2d 81 \(2003\)](#).
- 10 [Gage v. Bani, 141 U.S. 344, 12 S. Ct. 22, 35 L. Ed. 776 \(1891\)](#).
- 11 [Smith v. Tax Claim Bureau of Pike County, 834 A.2d 1247 \(Pa. Commw. Ct. 2003\)](#).
- 12 [Smith v. Tax Claim Bureau of Pike County, 834 A.2d 1247 \(Pa. Commw. Ct. 2003\)](#).

13

[Gage v. Bani, 141 U.S. 344, 12 S. Ct. 22, 35 L. Ed. 776 \(1891\).](#)

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## 72 Am. Jur. 2d State and Local Taxation § 828

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVI. Notice of Sale or of Proceedings for Sale

#### D. Types of Notice

## § 828. Notice by mail

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 4148

West's Key Number Digest, [Taxation](#) 2950

Where service of notice of the sale of land for taxes by mail or registered mail is expressly required or authorized by statute, conformity with the statute and with the rules and procedure of the United States Postal Service pertaining to the kind of mailing specified or allowed thereby is a sufficient compliance as long as all other duties and conditions contemplated as conditions precedent to such mailing have been fulfilled.<sup>1</sup> Where such conditions have been fulfilled, the service is complete and constitutes a legal notice when mailed and actual receipt thereof is not essential, absent some other condition prescribed by statute or made to govern in particular circumstances.<sup>2</sup>

Some statutes require the taxing authority to provide the owner with specific notice by certified mail with return receipt requested,<sup>3</sup> and a failure to request return receipt will violate both due process and the statute.<sup>4</sup> What is more, where the statute does not mandate a specific mode for mailing a notice of foreclosure of tax liens, a taxing authority complies with the notice requirement by sending the notice by certified mail, return receipt requested.<sup>5</sup> Moreover, a presumption is created that the notice has been delivered to the correct address where it was sent by certified mail and was never returned, and none of the previous letters sent by first class mail to the taxpayer had ever been returned.<sup>6</sup>

Proof of a custom of filing copies of notices of tax sales mailed out of the county treasurer's office, and of the fact that a copy was found without the original, in the place where, and under the circumstances in which it would have been found if the original had been mailed, is sufficient, in the absence of evidence to the contrary, to support a finding that the original was properly mailed.<sup>7</sup> It is presumed, in the absence of evidence to the contrary, that an officer charged with a duty of selling property for



unpaid taxes mailed a copy of the notice of sale required by statute to be mailed to the reputed owner of the property at the owner's last known address.<sup>8</sup>

A statute may require that the notice of a tax deed application be sent to the address listed on the deed of conveyance, and under such a statute, the tax deed is void if it is sent to the address listed on the tax roll and never received.<sup>9</sup> Under a statute requiring that a landowner be notified by registered mail of an impending tax sale of his or her property, where a tax delinquency notice, mailed to the wrong address, is returned unclaimed, and the tax collector makes no further effort to ascertain the tax debtor's correct address and to deliver the notice, a tax sale based on such misaddressed notice is void.<sup>10</sup> However, an incorrect address containing a notice to an owner of the tax sale of his or her property to satisfy delinquent property taxes is immaterial if the notice actually gets to the correct address,<sup>11</sup> and this is particularly true if no one, such as a representative of the owner, attempts to attend the sale.<sup>12</sup>

While notice by mail of a tax foreclosure is sufficient to comply with the Due Process Clause when the government hears nothing back to indicate notice was not received,<sup>13</sup> the fact that letters containing tax sale notices are returned unopened may be evidence that the taxing authority failed to diligently attempt to locate the taxpayers,<sup>14</sup> and in such situation, the taxing authority must take additional reasonable steps to attempt to provide notice to the property owner before selling the property if it is practicable to do so.<sup>15</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Tax sale purchaser's attempt to provide taxpayer with notice of intent to apply for a treasurer's tax deed for vacant lot was reasonably calculated to apprise taxpayer of purchaser's intent, and thus issuance of tax deed after failed attempt at service of notice by certified mail did not violate procedural due process, where purchaser sent notice by certified mail, return receipt requested, to taxpayer's actual address which was address where property tax statement was mailed, purchaser then published notice in newspaper in county in which property was located when the mailed notice was returned as unclaimed, and there was no evidence regarding why taxpayer did not accept purchaser's letter or that taxpayer lacked actual knowledge of purchaser's intent to apply for a tax deed. [U.S. Const. Amend. 14](#); [Neb. Rev. Stat. §§ 77-1832, 77-1834](#). [HBI, L.L.C. v. Barnette](#), 305 Neb. 457, 941 N.W.2d 158 (2020).

After certified mail notifying property owner of impending tax sale of property was returned as undeliverable, county was required to attempt some other reasonable method of supplying notice to owner to satisfy requirements of due process, even though county had satisfied statutory notice requirements and owner had failed to timely pay taxes or provide updated address; return of certified notice as undelivered was red flag that should have tipped off county that it needed to follow up, and county could have undertaken other reasonable steps to attempt to provide owner with notice without necessarily being obligated to conduct lengthy hunt for correct address. [U.S.C.A. Const. Amend. 14](#); [Const. Art. 2, § 7](#); [68 Okl.St. Ann. §§ 3105, 3106](#). [Crownover v. Keel](#), 2015 OK 35, 357 P.3d 470 (Okla. 2015).

## [END OF SUPPLEMENT]

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### Footnotes

1 Consolidated Motors v. Skousen, 56 Ariz. 481, 109 P.2d 41, 132 A.L.R. 1040 (1941); Dahn v. Trownsell,  
1998 SD 36, 576 N.W.2d 535 (S.D. 1998) (abrogated on other grounds by, Jones v. Flowers, 547 U.S. 220,  
126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006)).  
2 Cota v. McDermott, 73 N.D. 459, 16 N.W.2d 54, 155 A.L.R. 1271 (1944).  
3 Vucinovich v. Lakeshore Club, 2008-2244 La. App. 1 Cir. 5/09, 2009 WL 1272411 (La. Ct. App. 1st Cir.  
2009); Pitts v. Delaware County Tax Claim Bureau, 967 A.2d 1047 (Pa. Commw. Ct. 2009).  
4 Vucinovich v. Lakeshore Club, 2008-2244 La. App. 1 Cir. 5/09, 2009 WL 1272411 (La. Ct. App. 1st Cir.  
2009).  
5 Harville v. County of Erie, 148 A.D.2d 954, 539 N.Y.S.2d 192 (4th Dep't 1989).  
6 Miner v. Clinton County, N.Y., 541 F.3d 464 (2d Cir. 2008).  
7 Consolidated Motors v. Skousen, 56 Ariz. 481, 109 P.2d 41, 132 A.L.R. 1040 (1941).  
8 Henderson County v. Osteen, 297 N.C. 113, 254 S.E.2d 160 (1979).  
9 Weiss v. Prudential Enterprises, Inc., 387 So. 2d 457 (Fla. 1st DCA 1980).  
10 Standard Homes, Inc. v. Prestridge, 193 So. 2d 100 (La. Ct. App. 2d Cir. 1966).  
11 Wine v. Neal, 100 N.M. 431, 671 P.2d 1142 (1983).  
12 In Re Tax Sale of Real Property Situate in Paint Tp., Somerset County, 865 A.2d 1009 (Pa. Commw. Ct.  
2005), as amended, (Jan. 18, 2005).  
13 Nelson v. Ulster County, New York, 789 F. Supp. 2d 345 (N.D. N.Y. 2010).  
14 Tobia v. Town of Rockland, 106 A.D.2d 827, 484 N.Y.S.2d 226 (3d Dep't 1984).  
15 Jones v. Flowers, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006); Jarsew, LLC v. Green Tree  
Servicing, LLC, 2009 Ark. App. 324, 308 S.W.3d 161 (2009); Marion County Auditor v. Sawmill Creek,  
LLC, 2012 WL 962657 (Ind. 2012).

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## 72 Am. Jur. 2d State and Local Taxation § 829

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVI. Notice of Sale or of Proceedings for Sale

#### D. Types of Notice

## § 829. Notice by publication

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 4148

West's Key Number Digest, [Taxation](#) 2951, 2952

Simply publishing a notice of a tax sale in a newspaper a few weeks prior thereto without ever posting the notice at the address to which the notice was mailed is insufficient to satisfy the taxpayer's due process rights.<sup>1</sup> Moreover, notice by publication and posting to inform a mortgagee of real property of the purpose of the sale of the property for nonpayment of taxes does not meet due process requirements if the mortgagee's name and address are readily ascertainable.<sup>2</sup>

Newspaper publication of a notice of the sale of property for delinquent taxes is constitutionally inadequate notice to an owner of a significant interest in the property.<sup>3</sup> Notice by publication of a tax deficiency sale violates the due process rights of a nonresident owner where, with a reasonable and diligent search and inquiry, the county could contact the title company in order to locate the property owner's address.<sup>4</sup>

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### Footnotes

- <sup>1</sup> [Jones v. Flowers](#), 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006).  
As to notice by mail, see § 828.
- <sup>2</sup> [Menonite Bd. of Missions v. Adams](#), 462 U.S. 791, 103 S. Ct. 2706, 77 L. Ed. 2d 180 (1983); [J.A. Tobin Const. Co. v. Williams](#), 46 Kan. App. 2d 593, 263 P.3d 835 (2011).
- <sup>3</sup> [Dow v. State](#), 396 Mich. 192, 240 N.W.2d 450 (1976).

4 [Giacobbi v. Hall, 109 Idaho 293, 707 P.2d 404 \(1985\).](#)

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## 72 Am. Jur. 2d State and Local Taxation § 830

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVI. Notice of Sale or of Proceedings for Sale

#### D. Types of Notice

## § 830. Notice by publication—Time and place of publication

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 4148

West's Key Number Digest, [Taxation](#) 2951, 2952

### A.L.R. Library

[Inclusion or exclusion of first and last days in computing the time for performance of an act or event which must take place a certain number of days before a known future date, 98 A.L.R.2d 1331](#)

Where notice by publication is constitutionally adequate, statutory provisions governing the time and place of publication of notice of a tax sale must be followed.<sup>1</sup> However, under a requirement that the notice be printed in a newspaper published in the city or town in which the land is situated, the place of publication of a newspaper is the place where it is first put into circulation and where it is first issued to be delivered or sent to its subscribers, and the place where the newspaper is printed is immaterial.<sup>2</sup> When the notice must be published once a week for a specified period, it is sufficient if there is a publication once during each successive week although more than seven days elapse between some of the publications.<sup>3</sup> Under such a requirement, however, the sale cannot take place until the specified number of full weeks has elapsed since the first publication.<sup>4</sup> When it is required that the notice be published a certain number of days before the sale, one terminal day should be included and the other excluded.<sup>5</sup> If the notice is served by publication in a newspaper, the order of publication must designate the newspaper in which the publication is to be made; however, it is sufficient if it sets out the name of the newspaper without prefixing the name

of the town in which it is published if there is no other newspaper of that name in the same taxing district.<sup>6</sup> If it appears that a notice was published in a newspaper the name of which was prefixed by the name of the place in which the land was located, it will be presumed that the newspaper was published in such place; but without such prefix, no such presumption can be made.<sup>7</sup>

When a statute requires a notice to be posted near a certain public place, considerable latitude is allowed the public officials in determining the distance from the specified point at which the notice is posted.<sup>8</sup>

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Footnotes

- 1 [Krumbine v. Lebanon County Tax Claim Bureau](#), 541 Pa. 384, 663 A.2d 158 (1995) (setting forth the statutory requirements).
- 2 [People ex rel. O'Connell v. Read](#), 256 Ill. 408, 100 N.E. 230 (1912).  
As to the place of publication of a newspaper, generally, see [Am. Jur. 2d, Newspapers, Periodicals, and Press Associations](#) § 52.
- 3 [Ronkendorff v. Taylor's Lessee](#), 29 U.S. 349, 7 L. Ed. 882, 1830 WL 3895 (1830).
- 4 [Early v. Doe ex dem. Homans](#), 57 U.S. 610, 16 How. 610, 14 L. Ed. 1079, 1853 WL 7683 (1853).
- 5 [Madden v. Chernick](#), 63 R.I. 100, 7 A.2d 269 (1939).
- 6 [Knight v. Alexander](#), 38 Minn. 384, 37 N.W. 796 (1888).
- 7 [Connors v. City of Lowell](#), 209 Mass. 111, 95 N.E. 412 (1911).
- 8 [Haghawout v. Percival](#), 161 Cal. 491, 119 P. 649 (1911).

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## 72 Am. Jur. 2d State and Local Taxation § 831

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVI. Notice of Sale or of Proceedings for Sale

#### D. Types of Notice

## § 831. Notice by publication—Proof of publication

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 4148

West's Key Number Digest, [Taxation](#) 2951, 2952

Unless there is an express statutory requirement to the contrary, it is the fact of publication of notice and not the proof thereof which gives the collector jurisdiction to make the sale, and the return or affidavit of publication may be made after the sale.<sup>1</sup> Where, however, the statute requires record proof of publication, it must be strictly complied with, and ex parte affidavits filed long after the sale will not be sufficient.<sup>2</sup>

Proof of publication of a notice in a newspaper is often made by the affidavit of the publisher; if the newspaper is published by a corporation, it must appear that the officer who made the affidavit was duly authorized by the corporation.<sup>3</sup> The files of a newspaper in which an order for publication of notice in a tax proceeding was published are, when produced from proper custody, admissible in evidence as to the contents of the order.<sup>4</sup> The collector will not be allowed to contradict by oral testimony the return of service of notice by publication that he or she made under oath and constituting part of the public records of the collector's office.<sup>5</sup>

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### Footnotes

<sup>1</sup> [Sternberger v. Moffat](#), 44 Colo. 520, 99 P. 560 (1909).

<sup>2</sup> [Martin v. Barbour](#), 140 U.S. 634, 11 S. Ct. 944, 35 L. Ed. 546 (1891).

<sup>3</sup> [City of Chicago v. Stein](#), 252 Ill. 409, 96 N.E. 886 (1911).

4 [Miller v. Keaton, 260 Mo. 708, 168 S.W. 1140 \(1914\).](#)

5 [Sternberger v. Moffat, 44 Colo. 520, 99 P. 560 \(1909\).](#)

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## 72 Am. Jur. 2d State and Local Taxation Eleven LVII Refs.

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVII. Conduct of Sale

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2900](#), [2901](#), [2903](#), [2942](#), [2943](#), [2954](#), [2956](#) to [2963](#), [2966](#) to [2968](#), [2976](#), [2981](#) to [2985](#), [2990](#), [2991](#)

### A.L.R. Library

A.L.R. Index, Tax Sales

West's A.L.R. Digest, [Taxation](#)  [2900](#), [2901](#), [2903](#), [2942](#), [2943](#), [2954](#), [2956](#) to [2963](#), [2966](#) to [2968](#), [2976](#), [2981](#) to [2985](#), [2990](#), [2991](#)

### Forms

[Am. Jur. Legal Forms 2d §§ 238:18 to 238:20](#)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 160, 161](#)

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## 72 Am. Jur. 2d State and Local Taxation § 832

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

### LVII. Conduct of Sale

## § 832. Generally; requirement of strict compliance with law

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2900](#), [2901](#), [2903](#), [2942](#), [2943](#), [2954](#), [2963](#), [2990](#), [2991](#)

Every essential or material step in a tax sale proceeding that is prescribed by law must be strictly followed.<sup>1</sup> Otherwise, the sale may be avoided.<sup>2</sup> In other words, where a taxpayer is not properly before the court in property tax lien proceedings, the resulting decree and sale is a nullity.<sup>3</sup> In any case, confirmation of a tax sale rests in the sound discretion of the trial court.<sup>4</sup>

In some jurisdictions, all requirements of the law leading up to tax sales which are intended for the protection of the taxpayer against surprise or the sacrifice of his or her property are to be regarded as mandatory and are to be strictly enforced.<sup>5</sup> In other jurisdictions, however, a statute which provides in detail as to how sales for nonpayment of taxes will be conducted, but declares that no tax title will be invalidated for failure to comply with those provisions, is constitutional and makes the requirements of the statute directory rather than mandatory.<sup>6</sup>

The general rule of evidence that a public officer is presumed to do his or her duty<sup>7</sup> applies in tax proceedings in the same manner as to any other public act.<sup>8</sup>

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### Footnotes

- <sup>1</sup> [In re Ryan Inv. Co., Inc.](#), 335 S.C. 392, 517 S.E.2d 692 (1999).
- <sup>2</sup> [Marx v. Hanthorn](#), 148 U.S. 172, 13 S. Ct. 508, 37 L. Ed. 410 (1893); [Beckwith v. Curd](#), 347 Mo. 602, 148 S.W.2d 800 (1941).
- <sup>3</sup> [Wilson v. Blount County](#), 207 S.W.3d 741 (Tenn. 2006).

- 4 Board of County Comr's of Reno County v. Akins, 271 Kan. 192, 21 P.3d 535 (2001).  
5 King v. James, 388 S.C. 16, 694 S.E.2d 35 (Ct. App. 2010).  
6 Maxwell v. Page, 23 N.M. 356, 168 P. 492, 5 A.L.R. 155 (1917); Delmond v. Board Investors Co., 35 Ohio  
Op. 419, 48 Ohio L. Abs. 293, 74 N.E.2d 376 (Ct. App. 8th Dist. Cuyahoga County 1947), judgment aff'd,  
148 Ohio St. 301, 35 Ohio Op. 296, 74 N.E.2d 373 (1947).  
7 Am. Jur. 2d, Evidence § 221.  
8 Delmond v. Board Investors Co., 35 Ohio Op. 419, 48 Ohio L. Abs. 293, 74 N.E.2d 376 (Ct. App. 8th Dist.  
Cuyahoga County 1947), judgment aff'd, 148 Ohio St. 301, 35 Ohio Op. 296, 74 N.E.2d 373 (1947).

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## 72 Am. Jur. 2d State and Local Taxation § 833

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVII. Conduct of Sale

## § 833. Particular defects and irregularities; effect thereof

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2900](#), [2901](#), [2903](#), [2942](#), [2943](#), [2954](#), [2963](#), [2990](#), [2991](#)

### A.L.R. Library

[What constitutes a "public sale", 4 A.L.R.2d 575](#)

### Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 160](#) (Complaint, petition, or declaration—Allegation—Sale of property on unauthorized date)

Tax sales, to be valid, must be made at the place,<sup>1</sup> time,<sup>2</sup> and in the manner<sup>3</sup> required by law. Errors or irregularities which do not affect a substantial right<sup>4</sup> or the integrity, reliability, or fairness of the transfer are nonfatal defects which do not invalidate a sale.<sup>5</sup> Furthermore, a property owner may waive the alleged errors concerning a tax sale.<sup>6</sup>

**Observation:**

In some jurisdictions, tax sales are subject to a statutorily defined preemptive period after which certain irregularities of the sale can no longer be asserted.<sup>7</sup>

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**Footnotes**

- 1 Land v. Banks, 254 S.W. 786, 30 A.L.R. 1 (Tex. Comm'n App. 1923).
- 2 Redfield v. Parks, 132 U.S. 239, 10 S. Ct. 83, 33 L. Ed. 327 (1889).
- 3 Land v. Banks, 254 S.W. 786, 30 A.L.R. 1 (Tex. Comm'n App. 1923).
- 4 NYCTL 1999-1 Trust v. NY Pride Holdings, Inc., 34 A.D.3d 774, 825 N.Y.S.2d 521 (2d Dep't 2006).
- 5 Land v. County of Ulster, 84 N.Y.2d 613, 620 N.Y.S.2d 769, 644 N.E.2d 1325 (1994).
- 6 Howard v. Gunnell, 63 So. 3d 589 (Miss. Ct. App. 2011).
- 7 Bank One Louisiana, N.A. v. Gray, 792 So. 2d 29 (La. Ct. App. 2d Cir. 2001).

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## 72 Am. Jur. 2d State and Local Taxation § 834

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVII. Conduct of Sale

## § 834. Bidding; adequacy of price

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2900](#), [2901](#), [2903](#), [2956](#) to [2959](#), [2963](#), [2966](#), [2967](#)

### A.L.R. Library

[What constitutes a "public sale", 4 A.L.R.2d 575](#)

### Forms

[Am. Jur. Legal Forms 2d § 238:18](#) (Bid submitted by mail—For purchase of land at tax sale)

A statutory requirement that the sale of lands for delinquent taxes be a "public sale" necessitates that an opportunity be given for competitive bidding.<sup>1</sup> Apart from such a statutory dictate, the principle that property being sold at a judicial sale should be sold to the highest bidder<sup>2</sup> applies to sales of land for taxes, and it should appear on the record that the sale was made to the highest bidder.<sup>3</sup> The inadequacy of the price given at the sale of land for unpaid taxes thereon does not constitute a valid objection to the sale<sup>4</sup> at least if the price was not so inadequate as to suggest fraud.<sup>5</sup> Therefore, an owner will not be unlawfully deprived of his or her property when it is sold for less than fair market value at a tax foreclosure sale.<sup>6</sup> On the other hand, a statute may establish

the minimum bid at a tax sale.<sup>7</sup> The bidding should be conducted with fairness; any fraud or collusion tending to hold down the price bid is ground for setting aside the sale.<sup>8</sup> The officer<sup>9</sup> or court<sup>10</sup> conducting a tax sale may refuse to accept a grossly inadequate bid. Where the foreclosure judgment and order of sale provides that the properties could not be sold to any party, other than a taxing unit which is a party to the suit, for less than the properties' adjudged market value or aggregate amount of judgment, the property cannot be sold for less than the minimum bid restriction to a third-party purchaser.<sup>11</sup>

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Footnotes

- 1 [Ralston v. State, 218 Ind. 591, 34 N.E.2d 930 \(1941\).](#)
- 2 [Am. Jur. 2d, Judicial Sales § 79.](#)
- 3 [Bean v. Thompson, 19 N.H. 290, 1848 WL 2094 \(1848\).](#)
- 4 [Slater v. Maxwell, 73 U.S. 268, 18 L. Ed. 796, 1867 WL 11202 \(1867\); In re Hemstreet, 258 B.R. 134 \(Bankr. W.D. Pa. 2001\).](#)
- 5 [Manager of Div. of Finance of Jackson County v. La-Sha Consulting, Inc., 224 S.W.3d 605 \(Mo. Ct. App. W.D. 2006\).](#)
- 6 [Unified Government of Wyandotte County v. GHA Real Estate, 191 P.3d 363 \(Kan. Ct. App. 2008\), unpublished.](#)
- 7 [Clint Independent School Dist. v. Cash Inv., Inc., 970 S.W.2d 535, 127 Ed. Law Rep. 461 \(Tex. 1998\).](#)
- 8 [§ 836.](#)
- 9 [Krug v. Hopkins, 132 Neb. 768, 273 N.W. 221, 110 A.L.R. 1071 \(1937\).](#)
- 10 [Manager of Div. of Finance of Jackson County v. La-Sha Consulting, Inc., 224 S.W.3d 605 \(Mo. Ct. App. W.D. 2006\).](#)
- 11 [Clint Independent School Dist. v. Cash Inv., Inc., 970 S.W.2d 535, 127 Ed. Law Rep. 461 \(Tex. 1998\).](#)

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## 72 Am. Jur. 2d State and Local Taxation § 835

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVII. Conduct of Sale

## § 835. Payment of purchase price; extension of credit

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2976

### A.L.R. Library

[Propriety of accepting check or promissory note in satisfaction of bid at execution or judicial sale had for cash, 86 A.L.R.2d 292](#)

Extension of credit by an officer conducting a tax sale as to all or a portion of the purchaser's bid, when not authorized by statute, renders the sale invalid.<sup>1</sup> It also renders the officer conducting the sale personally liable for the money to the party entitled to it.<sup>2</sup> It is improper for an officer conducting a sale of land for the nonpayment of taxes to accept the successful bidder's promissory note in satisfaction of the bid.<sup>3</sup> However, it is proper for an officer conducting such a sale to accept a check or draft in satisfaction of the purchaser's bid.<sup>4</sup> Moreover, acceptance of the purchaser's check at a tax sale had for cash does not render the sale void where the check is honored and no prejudice results.<sup>5</sup>

The purchaser must comply with statutes that define the time within which the purchaser must pay the amount of the bid.<sup>6</sup> Thus, in some cases, the rules of civil procedure for calculating notice periods will not apply to the statutory procedure for purchasing a tax lien.<sup>7</sup> Moreover, the officer is not required to stop the sale and collect the money forthwith, and when there is no agreement for credit, the tax sale is not necessarily invalid merely because the amount of the bid is not collected for a few days.<sup>8</sup>



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Footnotes

- 1 [Semmes v. Fuller, 263 Mich. 214, 248 N.W. 599 \(1933\).](#)
- 2 [Longfellow v. Quimby, 29 Me. 196, 1848 WL 1702 \(1848\).](#)
- 3 [Donnel v. Bellas, 34 Pa. 157, 1859 WL 8789 \(1859\).](#)
- 4 [Trexler v. Africa, 27 Pa. Super. 385, 1905 WL 3606 \(1905\).](#)
- 5 [Olson v. Tax Service Corporation, 102 Colo. 75, 76 P.2d 1113 \(1938\).](#)
- 6 [In re Auditor General, 275 Mich. 53, 265 N.W. 763, 104 A.L.R. 813 \(1936\).](#)
- 7 [Tacke v. Montana Lakeshore Properties, LLC, 2011 MT 197, 361 Mont. 390, 260 P.3d 128 \(2011\).](#)
- 8 [Judah v. Brothers, 72 Miss. 616, 17 So. 752 \(1895\).](#)

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## 72 Am. Jur. 2d State and Local Taxation § 836

American Jurisprudence, Second Edition | May 2021 Update

### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVII. Conduct of Sale

## § 836. Fairness; collusive bidding

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2963, 2968

Tax sales must be conducted with entire fairness.<sup>1</sup> When such sale is characterized by fraud, unfairness, collusive bidding, or the like, it should be set aside or the purchaser be required to hold the title in trust for the owner.<sup>2</sup> A tax sale challenged more than two years later, however, will not be invalidated due to alleged fraud on the part of the purchaser where a statute disallows new evidence rebutting the presumption of validity after that period.<sup>3</sup>

An agreement between two persons to unite in bidding upon property at a tax sale or to form a partnership for the purpose of buying in tax titles is not necessarily unlawful.<sup>4</sup> However, an agreement between two or more persons, not general partners, who are competitive bidders at delinquent tax sales, that they will become partners in all lands that may be thereafter purchased by either of them, or that one will bid in the interests of both, contravenes public policy and will render void a tax deed acquired pursuant to such agreement.<sup>5</sup>

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### Footnotes

- <sup>1</sup> Slater v. Maxwell, 73 U.S. 268, 18 L. Ed. 796, 1867 WL 11202 (1867).
- <sup>2</sup> Slater v. Maxwell, 73 U.S. 268, 18 L. Ed. 796, 1867 WL 11202 (1867).
- <sup>3</sup> Garden State Investment v. Zaleski, 2010 WL 4904987 (N.J. Super. Ct. App. Div. 2010).
- <sup>4</sup> Barnes v. Morrison, 97 Va. 372, 34 S.E. 93 (1899).
- <sup>5</sup> McDannald v. Wilmoth, 82 W. Va. 719, 97 S.E. 132, 13 A.L.R. 663 (1918).

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## 72 Am. Jur. 2d State and Local Taxation § 837

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVII. Conduct of Sale

## § 837. Charges for which land is sold

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2956 to 2959

Generally, a tax sale to enforce the payment of a greater sum than the amount of taxes, penalties, and costs is invalid.<sup>1</sup> Tax sales for less than the amount of taxes, costs, and penalties due are likewise invalid.<sup>2</sup> Tax sales may, however, be valid where property was sold for a very small amount more or less than the taxes, penalties, and costs, and the variation was not intentional.<sup>3</sup> Some courts reject the rule that slight and unintentional variations do not render a tax sale void.<sup>4</sup>

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### Footnotes

- 1 Culbertson v. H. Witbeck Co., 127 U.S. 326, 8 S. Ct. 1136, 32 L. Ed. 134 (1888); Lumsden v. Erstine, 205 Ark. 1004, 172 S.W.2d 409, 147 A.L.R. 1132 (1943).
- 2 Knoke v. Swan, 2 Cal. 2d 630, 42 P.2d 1019, 97 A.L.R. 841 (1935).
- 3 Gardner v. Jones, 1956 OK 23, 309 P.2d 731 (Okla. 1956).
- 4 Knoke v. Swan, 2 Cal. 2d 630, 42 P.2d 1019, 97 A.L.R. 841 (1935).

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## 72 Am. Jur. 2d State and Local Taxation § 838

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVII. Conduct of Sale

## § 838. Charges for which land is sold—Statutes authorizing purchase price less than amount of taxes due; constitutional requirements

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2901, 2956 to 2959

Statutes authorizing the sale of tax delinquent property for less than the amount of the taxes, penalties, or interest due the taxing authorities do not violate constitutional requirements of equality and uniformity in legislation;<sup>1</sup> or constitutional prohibitions against the compromise, release, or remission of taxes or liabilities;<sup>2</sup> or other constitutional requirements or prohibitions.<sup>3</sup>

In supporting the conclusion that the constitutional provision for uniformity and equality is not violated by a statute permitting a sale of land for less than the amount of taxes due, courts rely on the fact that the statute involved provided for a resale of land acquired by the taxing authority at a prior tax sale<sup>4</sup> or on the fact that the statute involved provided for a sale of land already forfeited to the taxing authority for delinquent taxes<sup>5</sup> or on the existence of a provision that such a sale be either a public or a judicial sale.<sup>6</sup>

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### Footnotes

- 1 [Schreiber v. Cook County](#), 388 Ill. 297, 58 N.E.2d 40, 155 A.L.R. 1162 (1944).
- 2 [Schreiber v. Cook County](#), 388 Ill. 297, 58 N.E.2d 40, 155 A.L.R. 1162 (1944).
- 3 [State v. Board of Com'rs of Cascade County](#), 89 Mont. 37, 296 P. 1 (1931) (alleged impairment of contract).
- 4 [State ex rel. Equity Farms v. Hubbard](#), 203 Minn. 111, 280 N.W. 9 (1938).
- 5 [Richards v. State Tax Commission](#), 92 Utah 503, 69 P.2d 515 (1937).
- 6 [Schreiber v. Cook County](#), 388 Ill. 297, 58 N.E.2d 40, 155 A.L.R. 1162 (1944).

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## 72 Am. Jur. 2d State and Local Taxation § 839

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### Part Eleven. Sale of Land for Nonpayment of Taxes

### LVII. Conduct of Sale

## § 839. Amount of land or interest therein

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2960 to 2962

### Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 161](#) (Complaint, petition, or declaration—Allegation—Sale of more property than necessary to satisfy tax debt)

The requirements of a statute with regard to the amount of land or the interest therein which may be sold for nonpayment of taxes must be strictly complied with.<sup>1</sup> When different parcels of land belonging to the same owner and separately assessed are sold, each parcel must be sold for the tax assessed upon it alone.<sup>2</sup> In some jurisdictions, however, where there are a number of lots assessed to the same person, one lot may be sold for the taxes on all, and under such a statute, the collector has no power to sell more than one lot if it will produce sufficient revenue to pay the taxes on all.<sup>3</sup>

Unless it is otherwise provided by statute, selling all of a lot, rather than part of a lot, to satisfy taxes will not render a tax sale an absolute nullity<sup>4</sup> even where it could conveniently be sold separately.<sup>5</sup> It may, however, be provided by statute that the collector must sell the smallest quantity of the property taxed which any person will take for the amount of the tax and costs.<sup>6</sup>

**Practice Tip:**

A defaulting taxpayer bears the initial burden of requesting a determination of divisibility of property before the collector is required to undertake a divisibility study prior to a tax sale.<sup>7</sup>

Under a statute providing that the sale will not be invalidated where any part of the taxes was illegal or not chargeable on the land, but part was chargeable, a sale of a tract for the whole of the taxes assessed, where part of the taxes thereon have been paid by paying all taxes on a distinct and separable subdivision of the entire tract, is void only as to such subdivision.<sup>8</sup>

When the land belongs to tenants in common, of whom one has paid his or her tax and the other has not, the collector may sell the undivided interest of the one in default.<sup>9</sup> Moreover, the collector may sell the whole title only in the event that no person offers to take a smaller portion of the title and yet pay the full amount of unpaid taxes and charges.<sup>10</sup>

In some jurisdictions, tax sales, so long as they are properly conducted, relate to titles to land as opposed to rights of persons in possession of land when such rights have not ripened into title interests.<sup>11</sup> According to some courts, however, a remainder interest, as well as an existing life estate, is subject to sale for delinquent taxes; the fact that in enforcing a judgment for delinquent taxes the sheriff levied on and sold only the estate of a life tenant does not render the sale invalid.<sup>12</sup>

A tax collector is not prohibited from commencing a public sale of tax delinquent property not divisible in kind, by offering a 100% interest in the property for the taxes due and subsequently accepting any competing bids for lesser percentages of fractional ownership.<sup>13</sup> Furthermore, the county treasurer may sell two parcels of realty as a whole in satisfaction of tax liens where the boundary line between the two parcels passes through a building.<sup>14</sup>

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**Footnotes**

- 1 [Mason v. Fearson](#), 50 U.S. 248, 9 How. 248, 13 L. Ed. 125, 1850 WL 6926 (1850); [McQuade v. State](#), 321 Mich. 235, 32 N.W.2d 510 (1948).
- 2 [Francis v. Sheats](#), 153 Ala. 468, 45 So. 241 (1907).
- 3 [Mason v. Fearson](#), 50 U.S. 248, 9 How. 248, 13 L. Ed. 125, 1850 WL 6926 (1850); [Williamson v. White](#), 101 Ga. 276, 28 S.E. 846 (1897).
- 4 [Bank One Louisiana, N.A. v. Gray](#), 792 So. 2d 29 (La. Ct. App. 2d Cir. 2001).
- 5 [Keely v. Sanders](#), 99 U.S. 441, 25 L. Ed. 327, 1878 WL 18260 (1878).
- 6 [French v. Edwards](#), 80 U.S. 506, 20 L. Ed. 702, 1871 WL 14835 (1871); [County of Dakota v. Mallett](#), 235 Neb. 82, 453 N.W.2d 594 (1990).
- 7 [Folk v. Thomas](#), 344 S.C. 77, 543 S.E.2d 556 (2001).
- 8 [Richton Tie & Timber Co. v. McWilliams](#), 218 Miss. 355, 67 So. 2d 374 (1953).
- 9 [Ronkendorff v. Taylor's Lessee](#), 29 U.S. 349, 7 L. Ed. 882, 1830 WL 3895 (1830); [Duffley v. McCaskey](#), 345 Mo. 550, 134 S.W.2d 62, 126 A.L.R. 853 (1939).



- 10 Finnegan v. Bing, 772 A.2d 1070 (R.I. 2001).  
11 Lippert v. Jung, 366 Md. 221, 783 A.2d 206 (2001).  
12 Duffley v. McCaskey, 345 Mo. 550, 134 S.W.2d 62, 126 A.L.R. 853 (1939).  
13 Olson v. Rapides Parish Sheriff & Tax Assessor, 7 So. 3d 797 (La. Ct. App. 3d Cir. 2009), writ denied, 18  
So. 3d 117 (La. 2009), reconsideration not considered, 25 So. 3d 807 (La. 2009).  
14 Eugene Osterhout, Inc. v. Sardo, 66 A.D.2d 167, 413 N.Y.S.2d 479 (3d Dep't 1979).

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## 72 Am. Jur. 2d State and Local Taxation § 840

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVII. Conduct of Sale

## § 840. Return, report, and confirmation of sale

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2981 to 2985

### Forms

[Am. Jur. Legal Forms 2d § 238:19](#) (Report to local taxing authority—Affirming regularity of tax sale)

[Am. Jur. Legal Forms 2d § 238:20](#) (Resolution—Approval of tax sale—Directive to convey property)

Under some statutes, tax sale proceedings are in fact and in name judicial and must be reported to and confirmed by the court.<sup>1</sup> Under such statutes, confirmation by the court in the manner prescribed by statute is essential to the validity of the purchaser's title.<sup>2</sup> The sale is not complete until thus confirmed.<sup>3</sup> In the absence of specific statutory provisions, the confirmation of a tax sale rests in the sound discretion of the trial court,<sup>4</sup> and a review of the trial court's confirmation is limited to determining whether it committed an error of law or abused its discretion.<sup>5</sup>

A sheriff has a mandatory, nondiscretionary duty to prepare, following a sheriff's tax sale, a list of sold, suspended, and redeemed properties,<sup>6</sup> and the failure of the official holding such a tax sale to make a return or report to the official or registry prescribed by law renders the sale void.<sup>7</sup> While there is some authority to the contrary,<sup>8</sup> a failure to make such a report, return, or record of a tax sale within the time prescribed by statute will render the sale void.<sup>9</sup> At any rate, a report of a sale must be within the period of redemption if the report is required for the purpose of enabling the landowner to decide whether to redeem or contest the sale.<sup>10</sup>

A judgment or decree confirming a tax sale operates as a bar against all persons thereafter claiming the land in consequence of informality or illegality in the proceedings,<sup>11</sup> until the decree of confirmation is set aside in a proceeding for that purpose.<sup>12</sup> In some jurisdictions, after a certain time from the confirmation of a sale, all irregularities and defects in the sale are cured except those that go to the power to sell.<sup>13</sup>

The fact of prior payment of the taxes for which the land was sold is merely a defense to the confirmation proceeding, and consequently, neither the judgment of sale nor the decree confirming the sale can be collaterally attacked upon the ground that the prior payment rendered the sale ineffectual to pass title at least in the absence of fraud.<sup>14</sup> This is, however, authority for the view that if taxes have in fact been paid, the courts cannot acquire jurisdiction to decree a sale, and consequently, that a judgment and sale in such a case are absolutely null and void and are subject to collateral attack.<sup>15</sup>

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#### Footnotes

- 1 Free v. Greene, 175 Md. 36, 199 A. 857, 117 A.L.R. 717 (1938).
- 2 Bundy v. Wills, 88 Neb. 554, 130 N.W. 273 (1911).
- 3 Miller v. Henry, 105 Ark. 261, 150 S.W. 700 (1912); Bullington v. Greene County, 88 S.W.3d 571 (Tenn. Ct. App. 2002).
- 4 People v. Anderson, 380 Ill. 158, 43 N.E.2d 997 (1942).
- 5 Zeemer v. Washington County Tax Claim Bureau, 825 A.2d 716 (Pa. Commw. Ct. 2003).
- 6 Foster Foundation v. Gainer, 228 W. Va. 99, 717 S.E.2d 883 (2011).
- 7 Jenkinson v. Auditor General, 104 Mich. 34, 62 N.W. 163 (1895).
- 8 Cross v. Linski, 116 N.H. 128, 354 A.2d 409 (1976).
- 9 Harris v. Mason, 120 Tenn. 668, 115 S.W. 1146 (1909).
- 10 Free v. Greene, 175 Md. 36, 199 A. 857, 117 A.L.R. 717 (1938).
- 11 Thomas v. Lawson, 62 U.S. 331, 21 How. 331, 16 L. Ed. 82, 1858 WL 9385 (1858).
- 12 Lumsden v. Erstine, 205 Ark. 1004, 172 S.W.2d 409, 147 A.L.R. 1132 (1943).
- 13 Lumsden v. Erstine, 205 Ark. 1004, 172 S.W.2d 409, 147 A.L.R. 1132 (1943).
- 14 Rogers v. Dent, 292 Mo. 576, 239 S.W. 1074, 26 A.L.R. 615 (1922).
- 15 Hill & Jahns v. Lofton, 165 S.W. 67 (Tex. Civ. App. Amarillo 1914), writ refused, (Oct. 28, 1914).

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## 72 Am. Jur. 2d State and Local Taxation Eleven LVIII Refs.

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVIII. Who May Purchase

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Taxation](#) 🔑 2965

### A.L.R. Library

A.L.R. Index, Tax Sales

West's A.L.R. Digest, [Taxation](#) 🔑 2965

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## 72 Am. Jur. 2d State and Local Taxation § 841

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVIII. Who May Purchase

## § 841. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2965

Any person who is legally qualified to contract may purchase at a judicial sale unless such person has a duty to perform in reference to the sale which is so connected with the transaction that his or her interest as a purchaser may be inconsistent with such duty.<sup>1</sup> Likewise, there are persons who, by reason of their interest in the premises and their relationship to others interested therein, may not, for equitable reasons, become purchasers.<sup>2</sup> Neither can one who is under obligation to pay taxes upon the land which is being sold, as against the person to whom that duty to make payment is owing, become a purchaser in such way as to strengthen his or her own title.<sup>3</sup> In order, however, to bring this rule into operation, the purchaser must be under a legal or moral obligation to pay the tax, or there must be something in a contract or fiduciary relationship to the owner of the property which renders it inequitable as between themselves that the purchaser should acquire the title.<sup>4</sup> The mere fact that the purchaser at a tax sale had at the time that the tax was assessed an estate or interest in the land sold or an encumbrance upon it does not prevent him or her from acquiring a new and paramount title to the property to the exclusion of those having other estates or interests therein if such purchaser was under no obligation to pay the taxes for which the property was sold.<sup>5</sup> The holder of a tax lien or a tax title upon which the right of redemption has not expired, who subsequently acquires an interest in the property, may perfect and enforce a tax title.<sup>6</sup> The mere fact that the person who purchases a parcel of land at a tax sale is the one to whom the tax was assessed is not conclusive if the tax was improperly assessed to such person, and he or she was under no obligation to pay it.<sup>7</sup>

One who holds a judgment lien upon real property may acquire title to such property by purchasing it at a tax sale, to the exclusion of a mortgagee holding a prior lien.<sup>8</sup> Likewise, holders of improvement bonds payable out of proceeds of special assessments are not disqualified by reason of interest or otherwise from purchasing at a tax sale land within the improvement district where the bonds are merely upon the entire proceeds of the special assessment.<sup>9</sup> If, however, several persons hold claims

which are liens upon the same land, equity will not permit one of the lienholders to absorb the common fund by purchasing the land at a tax sale but will treat such lienholder as a redemptioner with a preferred claim to the amount paid to redeem.<sup>10</sup>

A statute may provide that the officer making the foreclosure sale must bid property off to the taxing unit that is party to judgment if a sufficient bid is not received.<sup>11</sup>

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#### Footnotes

- 1 [Am. Jur. 2d, Judicial Sales § 88.](#)
- 2 [Salts v. Salts, 28 Tenn. App. 318, 190 S.W.2d 188 \(1945\).](#)  
[As to persons occupying fiduciary relationships, see § 845.](#)
- 3 [§ 842.](#)
- 4 [Laton v. Balcom, 64 N.H. 92, 6 A. 37 \(1886\).](#)
- 5 [Jinkiaway v. Ford, 93 Kan. 797, 145 P. 885 \(1915\).](#)
- 6 [Carson v. Broady, 56 Neb. 648, 77 N.W. 80 \(1898\).](#)
- 7 [Staley v. Leomans, 53 Ark. 428, 14 S.W. 646 \(1890\).](#)
- 8 [Wilson v. Gadiant, 36 Minn. 59, 29 N.W. 887 \(1886\).](#)
- 9 [Teget v. Lambach, 226 Iowa 1346, 286 N.W. 522, 123 A.L.R. 392 \(1939\).](#)
- 10 [Miller v. First Nat. Bank of Englewood, 164 Colo. 449, 435 P.2d 899 \(1968\).](#)
- 11 [Clint Independent School Dist. v. Cash Inv., Inc., 970 S.W.2d 535, 127 Ed. Law Rep. 461 \(Tex. 1998\).](#)

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## 72 Am. Jur. 2d State and Local Taxation § 842

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVIII. Who May Purchase

## § 842. Person obliged to pay tax

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2965

Generally, one who is obligated to pay the taxes on lands, but who omits to pay such taxes, cannot strengthen his or her title to such land by buying the tax title when the property is sold as a consequence of his or her omission to pay the taxes on it;<sup>1</sup> such person's purchase at the sale will merely be given the effect of a redemption,<sup>2</sup> and the title will be the same as it was before the sale except that the lien for taxes is discharged.<sup>3</sup> A statute may provide that delinquent property tax owners are precluded from participating in a tax sale of their property.<sup>4</sup> This rule includes those whose duty it is to pay the taxes or who have such an interest in the property that they might redeem the same from the tax sale and save themselves from loss and injury or those lienholders who may pay the taxes and are given a preferred lien over other lienholders and the titleholder for the amount of the taxes paid.<sup>5</sup>

One who acquires property through or under a tax sale proceeding in violation of this rule cannot convey the property to a bona fide purchaser and thus cut off the rights, to the extent that they are recorded, of the persons falling under the protective umbrella of the rule.<sup>6</sup> Moreover, the rule cannot be evaded by such person by allowing the property to be sold to a third person and then purchasing it from such third party,<sup>7</sup> by organizing a corporation and causing the tax deed to be made to it,<sup>8</sup> or by any other collusive arrangement which would directly or indirectly defeat the operation of the rule.<sup>9</sup>

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### Footnotes

- <sup>1</sup> [Higgins v. Trauger](#), 2001 ND 149, 632 N.W.2d 463 (N.D. 2001); [UMLIC VP LLC v. T & M Sales and Environmental Systems, Inc.](#), 176 S.W.3d 595 (Tex. App. Corpus Christi 2005).
- <sup>2</sup> [Higgins v. Trauger](#), 2001 ND 149, 632 N.W.2d 463 (N.D. 2001).

- 3                   Chapin v. Streeter, 124 U.S. 360, 8 S. Ct. 529, 31 L. Ed. 475 (1888); Buchanan v. Hansen, 820 P.2d 908  
                      (Utah 1991).
- 4                   People v. Meyers, 158 Ill. 2d 46, 196 Ill. Dec. 646, 630 N.E.2d 811 (1994).
- 5                   McKinnon v. Bradley, 178 Or. 45, 165 P.2d 286 (1946).
- 6                   McKinnon v. Bradley, 178 Or. 45, 165 P.2d 286 (1946).
- 7                   UMLIC VP LLC v. T & M Sales and Environmental Systems, Inc., 176 S.W.3d 595 (Tex. App. Corpus  
                      Christi 2005).
- 8                   Crane v. Taylor, 1953 OK 197, 261 P.2d 587 (Okla. 1953).
- 9                   Crane v. Taylor, 1953 OK 197, 261 P.2d 587 (Okla. 1953).

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## 72 Am. Jur. 2d State and Local Taxation § 843

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

### LVIII. Who May Purchase

## § 843. Person obliged to pay tax—Title as against stranger; as against taxing unit

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2965

The doctrine which denies to one under obligation to pay taxes on land the right to strengthen his or her title by the acquisition of title at a tax sale arising from his or her own delinquency was devised for the protection of persons whose interests in the land sold would be impaired if a person neglecting the duty to pay a tax were permitted to purchase the land at the resulting tax sale.<sup>1</sup> Such person may, however, acquire a title which will be good against strangers; if the other persons interested in the property do not complain, a stranger cannot.<sup>2</sup> As against the governmental body imposing the tax, the defaulting owner, or other person having an interest in the property, has the right to purchase at, and acquire title from or through, a tax sale of the property.<sup>3</sup> However, some courts have held that even as against the taxing authority, an owner of land who has held title throughout the period of tax delinquency cannot be a purchaser at its tax sale,<sup>4</sup> particularly where a contrary view would be at variance with statutory provisions governing tax sales.<sup>5</sup> A statute lowering the minimum bid formerly required in case of sale by the State of property which it had purchased at a tax sale does not enable the defaulting owner to bid in the property at such sale at less than the amount due with respect of the delinquent tax.<sup>6</sup>

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### Footnotes

- 1 Warner v. Day, 1946 OK 208, 197 Okla. 319, 170 P.2d 246 (1946).
- 2 Warner v. Day, 1946 OK 208, 197 Okla. 319, 170 P.2d 246 (1946).
- 3 Raquette Falls Land Co. v. State, 156 Misc. 227, 281 N.Y.S. 476 (Ct. Cl. 1935), aff'd, 247 A.D. 837, 286 N.Y.S. 606 (3d Dep't 1936).
- 4 Garvey v. Byram, 18 Cal. 2d 279, 115 P.2d 501, 136 A.L.R. 1137 (1941).
- 5 Garvey v. Byram, 18 Cal. 2d 279, 115 P.2d 501, 136 A.L.R. 1137 (1941).

6 [Garvey v. Byram, 18 Cal. 2d 279, 115 P.2d 501, 136 A.L.R. 1137 \(1941\).](#)

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## 72 Am. Jur. 2d State and Local Taxation § 844

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVIII. Who May Purchase

## § 844. Person in possession of land

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2965

A person is not barred from acquiring title to property at a tax sale merely because he or she was in possession of the property when the tax was assessed if such person was under no obligation to pay the tax.<sup>1</sup> However, one in possession of land under claim of title, even though wrongfully, cannot acquire any better title by allowing the land to be sold for taxes and buying it at the tax sale since, if the possession is such as might ripen into a good title under the statute of limitations, the occupant has a taxable interest in the land.<sup>2</sup> A vendee in possession cannot acquire a tax title to the land and claim thereunder adversely to the vendor whether the taxes were due at the time that the contract was entered into<sup>3</sup> or were assessed later.<sup>4</sup> A tenant in common cannot acquire title to common property at a tax sale and assert the right to possession solely for his or her benefit.<sup>5</sup>

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### Footnotes

- <sup>1</sup> [Link v. Doerfer](#), 42 Wis. 391, 1877 WL 7077 (1877).
- <sup>2</sup> [Noonan v. Lee](#), 67 U.S. 499, 17 L. Ed. 278, 1862 WL 6753 (1862) (overruled in part on other grounds by, [Hornbuckle v. Toombs](#), 85 U.S. 648, 21 L. Ed. 966, 1873 WL 16070 (1873)); [Barr v. Eason](#), 292 Ark. 106, 728 S.W.2d 183 (1987).
- <sup>3</sup> [Lamborn v. Dickinson County Com'rs](#), 97 U.S. 181, 24 L. Ed. 926, 1877 WL 18542 (1877); [Smith v. Boyer](#), 72 W. Va. 632, 78 S.E. 787 (1913).
- <sup>4</sup> [Finch v. Noble](#), 49 Wash. 578, 96 P. 3 (1908).
- <sup>5</sup> [In re Foreclosure of Liens](#), 130 Wash. 2d 142, 922 P.2d 73 (1996).

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## 72 Am. Jur. 2d State and Local Taxation § 845

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVIII. Who May Purchase

## § 845. Person in relation of trust to owner

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2965

Persons having no legal interest in land assessed for taxation or subject to a tax lien, but who occupy such fiduciary relationship to the owner that it would be inequitable to allow them to take advantage of that relationship to the prejudice of the owner, cannot acquire title to the property at a tax sale, and if they attempt to purchase it, the purchase operates merely as a payment of the tax.<sup>1</sup> This rule applies to purchases by—

— guardians and trustees.<sup>2</sup>

— agents.<sup>3</sup>

— attorneys.<sup>4</sup>

— persons assuming without authority the management and control of the lands of another.<sup>5</sup>

— officers of corporations.<sup>6</sup>

After the relation of trust or confidence has ceased, the person who occupied such relation is no longer prevented from purchasing for his or her own benefit.<sup>7</sup>

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### Footnotes

<sup>1</sup> [Miller v. First Nat. Bank of Englewood](#), 164 Colo. 449, 435 P.2d 899 (1968).

- 2 Miller v. First Nat. Bank of Englewood, 164 Colo. 449, 435 P.2d 899 (1968).  
3 Lamborn v. Dickinson County Com'rs, 97 U.S. 181, 24 L. Ed. 926, 1877 WL 18542 (1877); Miller v. First  
Nat. Bank of Englewood, 164 Colo. 449, 435 P.2d 899 (1968).  
4 Am. Jur. 2d, Attorneys at Law § 197.  
5 Morris v. Joseph, 1 W. Va. 256, 1866 WL 1275 (1866).  
6 Am. Jur. 2d, Corporations § 1532.  
7 Price v. Foretich, 138 Miss. 847, 103 So. 791 (1925).

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## 72 Am. Jur. 2d State and Local Taxation § 846

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVIII. Who May Purchase

## § 846. Person in relation of trust to owner—Husband and wife; parent and child

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2965

According to some courts, neither a husband nor a wife can acquire the property of the other by purchasing it at a sale for nonpayment of taxes<sup>1</sup> or by purchasing such land from a holder of a tax deed.<sup>2</sup> According to other courts, a spouse not in possession or receiving the rents, and not under any other legal or moral obligation to pay taxes, may acquire title to land owned by the other spouse and others by purchase at a sale for taxes provided that such purchase is made in good faith and with the purchasing spouse's own money.<sup>3</sup> However, when a spouse buys in the property on behalf of the insolvent spouse, who has allowed the land to be sold for nonpayment of taxes, the purchase will inure to the benefit of the insolvent spouse's creditors,<sup>4</sup> or it will be deemed a redemption by the insolvent spouse<sup>5</sup> if it indicates a collusive arrangement.<sup>6</sup> If a child, on going to pay the taxes on a parent's land, finds that the land is being offered for sale and bids it in to protect the parent's interests, the child's purchase amounts only to a redemption.<sup>7</sup>

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### Footnotes

- 1 [Whelchel v. Solomon](#), 254 Miss. 334, 180 So. 2d 642 (1965).
- 2 [Whelchel v. Solomon](#), 254 Miss. 334, 180 So. 2d 642 (1965).
- 3 [Wood v. Armour](#), 88 Wis. 488, 60 N.W. 791 (1894).
- 4 [Herrin v. Henry](#), 75 Ark. 273, 87 S.W. 430 (1905).
- 5 [Higgins v. Trauger](#), 2003 ND 3, 656 N.W.2d 9 (N.D. 2003).
- 6 [Higgins v. Trauger](#), 2001 ND 149, 632 N.W.2d 463 (N.D. 2001).
- 7 [Grober v. Clements](#), 71 Ark. 565, 76 S.W. 555 (1903).

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## 72 Am. Jur. 2d State and Local Taxation § 847

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LVIII. Who May Purchase

## § 847. Officer conducting sale

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2965

The principle that the officer who conducts a judicial sale may not become the purchaser of the property being sold at such sale<sup>1</sup> applies to tax sales.<sup>2</sup>

### Observation:

According to some statutes, the prohibition that "no" sheriff may purchase a tax lien or receive a tax deed is not limited to only the sheriff conducting the tax sale.<sup>3</sup>

The rule applies to the collector of taxes<sup>4</sup> and to a city attorney under whose direction and advice a sale is conducted.<sup>5</sup> Neither is it permissible for the officer conducting the sale to bid for another person<sup>6</sup> or strike land off to a purchaser not present at the sale.<sup>7</sup> During his or her term of office, a county treasurer cannot, by purchasing certificates of delinquency, initiate the proceedings which will lead to the treasurer's purchase after the term has expired.<sup>8</sup>

Statutes may declare void or voidable a tax sale at which the officer conducting it directly or indirectly purchases the property.<sup>9</sup> Likewise, the purchase of an interest in property by a county official at a tax sale may be presumptively void even if the county's role in such a sale is ministerial in nature.<sup>10</sup>

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Footnotes

- 1 Am. Jur. 2d, Judicial Sales § 90.
- 2 U.S. v. 329.22 Acres of Land, More or Less, in Brevard County, State of Fla., 307 F. Supp. 34 (M.D. Fla. 1968), judgment aff'd, 418 F.2d 551 (5th Cir. 1969).
- 3 Subcarrier Communications, Inc. v. Nield, 218 W. Va. 292, 624 S.E.2d 729 (2005).
- 4 Hubbard v. Taylor, 83 Vt. 120, 74 A. 641 (1909).
- 5 Collins v. Hoffman, 62 Wash. 278, 113 P. 625 (1911).
- 6 Crahan v. Town of Chittenden, 82 Vt. 410, 74 A. 86 (1909).
- 7 Hubbard v. Taylor, 83 Vt. 120, 74 A. 641 (1909).
- 8 Okanogan Power & Irrigation Co. v. Quackenbush, 107 Wash. 651, 182 P. 618, 5 A.L.R. 966 (1919).
- 9 Davis v. Howe, 213 S.W. 609 (Tex. Comm'n App. 1919).
- 10 Aspen Storage Inc. v. Flanagan, 2005 SD 107, 705 N.W.2d 863 (S.D. 2005).  
But see Buchanan v. Tax Claim Bureau of Pike County, 860 A.2d 611 (Pa. Commw. Ct. 2004) (member of county planning commission not a "county officer" for purposes of statute rendering elected or appointed county officer ineligible to purchase property at tax sale).

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## 72 Am. Jur. 2d State and Local Taxation Eleven LIX A Refs.

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LIX. Rights and Title of Purchaser


##### A. In General

[Topic Summary](#) | [Correlation Table](#)

## Research References


### West's Key Number Digest


West's Key Number Digest, [Statutes](#)  278.39

West's Key Number Digest, [Taxation](#)  2114, 2766, 2772, 2909, 2971, 2973, 2976, 2988, 2991, 3030, 3062, 3065, 3075, 3076, 3078, 3115, 3132, 3137, 3145

### A.L.R. Library

A.L.R. Index, Tax Sales

West's A.L.R. Digest, [Statutes](#)  278.39

West's A.L.R. Digest, [Taxation](#)  2114, 2766, 2772, 2909, 2971, 2973, 2976, 2988, 2991, 3030, 3062, 3065, 3075, 3076, 3078, 3115, 3132, 3137, 3145

### Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 149](#)

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## 72 Am. Jur. 2d State and Local Taxation § 848

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LIX. Rights and Title of Purchaser

##### A. In General

##### 1. General Principles

## § 848. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Statutes](#)  278.39

West's Key Number Digest, [Taxation](#)  2114, 2909, 2976, 3030, 3062, 3065

In some jurisdictions, a purchaser at a tax sale acquires vested title to property, subject to the taxpayer's equitable right of redemption.<sup>1</sup> In other jurisdictions, however, title does not vest in the tax sale purchaser until the final decree is issued; the tax sale purchaser has neither legal nor equitable title but rather has merely a lien against the property which ripens into title through the process of foreclosure of the equity of redemption.<sup>2</sup> Until such time, the purchaser's title is conditional<sup>3</sup> while present title remains in the former owner subject to the lien or encumbrance of the purchaser as security for the money paid at the sale.<sup>4</sup>

### Observation:

In some jurisdictions, the purchaser of property at a tax sale has equitable title to the property.<sup>5</sup> In other jurisdictions, however, the issuance of a certificate of purchase at a tax sale under state statute does not affect the delinquent property owner's legal or equitable title to the property.<sup>6</sup>

The inchoate interest of a purchaser of property at a tax sale consists of three rights: the right to receive the sum paid for the tax sale certificate with interest at the redemption rate for which the property was sold, the right to redeem from the holder a subsequently issued tax sale certificate, and the right to acquire title by foreclosing the equity of redemption of all outstanding interests, including that of the property owner.<sup>7</sup> The rights acquired are contractual in their nature and are protected against subsequent impairment by legislative action.<sup>8</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

The tax-sale deed vests the purchaser with a defeasible and taxable fee interest in the property, which continues for a one-year period during which time the delinquent taxpayer or any other party holding an interest in or lien on the property may redeem the property by paying to the tax-sale purchaser the purchase price plus any taxes paid and interest; otherwise, if no one redeems the property, all the liens and ownership interests in the property existing prior to the tax sale are swept away at the close of the year, leaving the tax-sale purchaser with clear title to the property while the prior lien-holders and owner have no remaining interest in the property. West's [Ga.Code Ann. § 48–4–1](#). [DLT List, LLC v. M7ven Supportive Housing & Development Group](#), 779 S.E.2d 436 (Ga. Ct. App. 2015).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 [In re Minter](#), 314 B.R. 164 (Bankr. W.D. Tenn. 2004) (applying Tennessee law).
- 2 [Dillow v. Magraw](#), 102 Md. App. 343, 649 A.2d 1157 (1994), judgment aff'd, 341 Md. 492, 671 A.2d 485 (1996).  
As to redemption, generally, see §§ 889 to 931.  
As to the characterization of one who acquires an interest in property during the pendency of a suit concerning the land as a claimant pendente lite, see [Am. Jur. 2d, Lis Pendens](#) § 13.
- 3 [Associates Home Equity Services Co., Inc. v. Hunt](#), 151 S.W.3d 559 (Tex. App. Beaumont 2004).
- 4 [Blackford v. Judith Basin County](#), 109 Mont. 578, 98 P.2d 872, 126 A.L.R. 639 (1940).
- 5 [In re Donovan](#), 266 B.R. 862 (Bankr. S.D. Iowa 2001) (applying Iowa law).
- 6 [Demos v. Pappas](#), 2011 IL App (1st) 100829, 353 Ill. Dec.671, 956 N.E.2d 533 (App. Ct. 1st Dist. 2011).
- 7 [Varsolona v. Breen Capital Services Corp.](#), 180 N.J. 605, 853 A.2d 865 (2004).
- 8 § 869.

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## 72 Am. Jur. 2d State and Local Taxation § 849

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

### LIX. Rights and Title of Purchaser


#### A. In General

#### 1. General Principles

## § 849. Burden of proving validity of title; presumption in favor of title

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3132](#), [3137](#)

The burden is on the purchaser and those claiming under or through the purchaser to establish the regularity of the tax sale proceeding and show compliance with all substantial requisites of the law whenever the validity of the tax title is called into question.<sup>1</sup> Although the law ordinarily presumes that public officers have properly discharged their official duties according to the law,<sup>2</sup> in the absence of any statutory provision to the contrary, no presumption is raised in favor of a tax title to real estate based upon a collector's sale for taxes, to cure any radical defect in the proceedings.<sup>3</sup> Under this rule, anyone who claims title to land by virtue of a tax sale must show the existence of every fact necessary to give jurisdiction and authority to the officer who made the sale and a strict compliance with all things required by the statute for carrying out the sale.<sup>4</sup>

Courts may regard provisions of tax sale statutes as merely directory and regard the presumption that a public officer has done his or her duty as prima facie evidence that all of the essentials fixed by statute for a tax sale were complied with at least where the statute does not, either expressly or impliedly, require a different method of establishing the particular fact involved.<sup>5</sup>

### Observation:

Under such statutes, "prima facie evidence" means evidence that, if un rebutted or unexplained, is sufficient to maintain the proposition.<sup>6</sup>

Thus, a tax deed of the sheriff will constitute prima facie proof of the regularity of a tax adjudication proceeding<sup>7</sup> and of all the proceedings subsequent to the date that the taxes initially became delinquent.<sup>8</sup> Where the deed is valid on its face, the burden of proof is shifted from the tax sale purchaser to the person who attacks the validity of the deed because of some irregularity in connection with the proceedings.<sup>9</sup> Such irregularity must be shown by competent,<sup>10</sup> affirmative evidence to the contrary.<sup>11</sup>

A court order ratifying a tax sale reported to it is prima facie evidence of the correctness of the acts of the collector or treasurer, making it necessary for the party attacking it to offer evidence to prove its incorrectness in order to upset the sale.<sup>12</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Presumption of a valid tax sale may be rebutted by a party attacking the validity of the tax deed. [Neb. Rev. Stat. § 77-1842](#). [Hauxwell v. Henning](#), 291 Neb. 1, 863 N.W.2d 798 (2015).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 [Little v. Herndon](#), 77 U.S. 26, 19 L. Ed. 878, 1869 WL 11461 (1869); [Greil Bros. Co. v. City of Montgomery](#), 182 Ala. 291, 62 So. 692 (1913).
- 2 [Am. Jur. 2d, Evidence § 221](#).
- 3 [Ronkendorff v. Taylor's Lessee](#), 29 U.S. 349, 7 L. Ed. 882, 1830 WL 3895 (1830); [Pickens v. Adams](#), 7 Ill. 2d 283, 131 N.E.2d 38, 56 A.L.R.2d 605 (1955).
- 4 [Marx v. Hanthorn](#), 148 U.S. 172, 13 S. Ct. 508, 37 L. Ed. 410 (1893).
- 5 [Consolidated Motors v. Skousen](#), 56 Ariz. 481, 109 P.2d 41, 132 A.L.R. 1040 (1941).
- 6 [Town of Blue Hill v. Leighton](#), 2011 ME 103, 30 A.3d 848 (Me. 2011).
- 7 [Cressionnie v. Intrepid, Inc.](#), 879 So. 2d 736 (La. Ct. App. 1st Cir. 2004).
- 8 [Massey v. Griffiths](#), 2007 UT 10, 152 P.3d 312 (Utah 2007).
- 9 [Del Castillo v. McConnico](#), 168 U.S. 674, 18 S. Ct. 229, 42 L. Ed. 622 (1898); [Cressionnie v. Intrepid, Inc.](#), 879 So. 2d 736 (La. Ct. App. 1st Cir. 2004).
- 10 [Ottaco Acceptance, Inc. v. Huntzinger](#), 268 Neb. 258, 682 N.W.2d 232 (2004).
- 11 [Edwards v. Neace](#), 898 N.E.2d 343 (Ind. Ct. App. 2008).
- 12 [Free v. Greene](#), 175 Md. 36, 199 A. 857, 117 A.L.R. 717 (1938).



## 72 Am. Jur. 2d State and Local Taxation § 850

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LIX. Rights and Title of Purchaser

##### A. In General

##### 1. General Principles

## § 850. Effect of payment of taxes prior to sale

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2766](#), [2976](#)

Tax delinquencies, after correction, are mere irregularities,<sup>1</sup> and therefore, a tax deed which is executed when there was no tax lien on the property conveys no interest.<sup>2</sup> If the taxes on property have been paid prior to a sale therefor, the tax sale proceedings are void and confer no title on the purchaser.<sup>3</sup>

When the government receives property tax payments from whatever source, its interest is satisfied.<sup>4</sup> It is immaterial by whom the payment is made if the proper officer accepts it.<sup>5</sup> Thus, payment of taxes by persons who thought the land was theirs, even though they did not have proper record title, precludes tax sale proceedings, and thus, no title can be conferred in the tax certificate purchaser.<sup>6</sup>

Although when the owner of lands intended in good faith to pay all the taxes on them, but by mistake fails to pay the tax on part of the land, a sale of such lands is void;<sup>7</sup> payment of the taxes for one or more of the years included in the tax judgment is not sufficient to avoid the effect of the judgment and sale.<sup>8</sup>

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### Footnotes

- 1 Center for Self-Improvement and Community Development v. Lennar Corp., 173 Cal. App. 4th 1543, 94
- 2 Cal. Rptr. 3d 74 (1st Dist. 2009).
- 3 Giobbi v. Bramson, 560 A.2d 1079 (Me. 1989).
- 4 Gage v. Kaufman, 133 U.S. 471, 10 S. Ct. 406, 33 L. Ed. 725 (1890); City of Omaha v. Morello, 257 Neb.
- 5 869, 602 N.W.2d 1 (1999).
- 6 Crusader Servicing Corp. v. City of Wildwood, 345 N.J. Super. 456, 785 A.2d 484 (Law Div. 2001).
- 7 Bennett v. Hunter, 76 U.S. 326, 19 L. Ed. 672, 1869 WL 11496 (1869); Ramsburg v. Jones, 104 W. Va.
- 8 498, 140 S.E. 485 (1927).
- 9 Skinner v. Simms, 355 So. 2d 448 (Fla. 1st DCA 1978).
- 10 Lewis v. Monson, 151 U.S. 545, 14 S. Ct. 424, 38 L. Ed. 265 (1894).
- 11 Stewart v. Carter, 31 Minn. 385, 18 N.W. 98 (1884).

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## 72 Am. Jur. 2d State and Local Taxation § 851

American Jurisprudence, Second Edition | May 2021 Update

### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LIX. Rights and Title of Purchaser

##### A. In General

##### 1. General Principles

## § 851. Effect of tender and refusal of officer to accept

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2772](#)

### A.L.R. Library

[Effect of certificate, statement \(or refusal thereof\), or error by tax collector or other public officer regarding unpaid taxes or assessments against specific property, 21 A.L.R.2d 1273](#)

Where the failure to pay a particular tax arises from the tax collector's unjustifiable refusal to accept duly tendered payment of the tax, a subsequent sale of the land for such nonpayment will not cut off the taxpayer's right to redeem or make payment of the taxes.<sup>1</sup> Neither is it necessary that the tender be made by the owner in person; and when the collector has established a uniform rule that he or she would receive the tax from no one but the owner in person, a tender is unnecessary, and a sale after such rule has been established is void.<sup>2</sup> A sale is also ineffective to cut off the taxpayer's right to redeem or make payment of the taxes where the fault, although not that of the tax collector, whose refusal to accept payment is bona fide, cannot be attributed to the taxpayer.<sup>3</sup>

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Footnotes

- 1 [Beauchamp v. McLauchlin](#), 200 Miss. 83, 25 So. 2d 771 (1946).
- 2 [Tacey v. Irwin](#), 85 U.S. 549, 21 L. Ed. 786, 1873 WL 15968 (1873).
- 3 [Hossom v. City of Long Beach](#), 83 Cal. App. 2d 745, 189 P.2d 787 (2d Dist. 1948).

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## 72 Am. Jur. 2d State and Local Taxation § 852

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

### LIX. Rights and Title of Purchaser

#### A. In General

#### 1. General Principles

## § 852. Failure to pay due to mistake or other fault of collecting officer

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2772](#)

### A.L.R. Library

[Effect of certificate, statement \(or refusal thereof\), or error by tax collector or other public officer regarding unpaid taxes or assessments against specific property, 21 A.L.R.2d 1273](#)

A property owner's good-faith effort to pay taxes, frustrated by misinformation, negligence, error, or willful neglect, such as the refusal of information, by the public officer required to accept payment and to give information as to the status of delinquent taxes, is equivalent to payment at least to the extent that it will discharge tax liens subsequently declared against the land and effectively bar sales for nonpayment of taxes.<sup>1</sup>

This rule applies where—

— upon inquiry, the taxpayer was told that no taxes were due.<sup>2</sup>

— upon inquiry, the taxpayer was informed that certain designated taxes were due, but there was a failure to include either all the taxes or all the property of the taxpayer, or a failure to inform the taxpayer of the proper amount necessary to safeguard the property from tax foreclosure.<sup>3</sup>

— the taxing official failed or refused to give an inquiring taxpayer pertinent information.<sup>4</sup>

— the payment was made but the officer mistakenly applied it to the wrong lot.<sup>5</sup>

In order, however, to entitle the owner to invalidate a tax sale on the ground that he or she attempted to pay the tax and was frustrated by an officer to whom the tax was payable, it must appear that the owner applied to an officer having authority in the premises, and stated his or her inquiry correctly, and that the owner acted with reasonable care and diligence.<sup>6</sup>

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#### Footnotes

- 1 [Schuman v. Person, 216 Ark. 732, 227 S.W.2d 160, 21 A.L.R.2d 1269 \(1950\).](#)
- 2 [Case v. Henry, 55 N.M. 154, 228 P.2d 433 \(1951\).](#)
- 3 [Hilton v. Lincoln County, 178 Or. 616, 169 P.2d 329 \(1946\).](#)
- 4 [Ponder v. Ebey, 1944 OK 271, 194 Okla. 407, 152 P.2d 268 \(1944\).](#)
- 5 [Shuptrine v. Wohl Holding Corp., 147 Fla. 185, 3 So. 2d 524 \(1941\).](#)
- 6 [Entrekin v. Tide Water Associated Oil Co., 203 Miss. 767, 35 So. 2d 305 \(1948\).](#)

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## 72 Am. Jur. 2d State and Local Taxation § 853

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LIX. Rights and Title of Purchaser


##### A. In General

##### 1. General Principles

## § 853. Right to possession

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3075, 3076

In some jurisdictions, a purchaser at a tax sale may immediately take possession of the property if able to do so without force, fraud, or collusion and if the former owner has no other possession than that which the law annexes as an incident to ownership.<sup>1</sup> In other jurisdictions, a tax title owner is entitled to take possession of property upon presentation of a certified copy of a tax deed to a judge of competent jurisdiction.<sup>2</sup> In still other jurisdictions, however, a tax deed purchaser has no constructive possession of the premises and no more right to go upon and make use of them than any stranger to the title would have.<sup>3</sup> Thus, a purchaser is not entitled to possession of the premises during the redemption period<sup>4</sup> and is not entitled to the rents, issues, and profits during that time.<sup>5</sup> In fact, in such jurisdictions, a tax deed purchaser's entry upon the premises would be a trespass.<sup>6</sup> However, after the expiration of the redemption period and the execution of the tax deed, if the owner does not peaceably yield possession, the purchaser may resort to a writ of ejectment or to some other possessory action to obtain possession.<sup>7</sup> After expiration of the statutory period for redemption, however, the right to redeem may be barred by the filing of a notice of barment.<sup>8</sup>

Generally, if the claimant under the tax deed pleads his or her deed, a prima facie case is made, and the former owner has the burden of showing irregularities prior thereto.<sup>9</sup> The owner in possession against whom the ejectment proceedings are brought may defend upon the ground of defect in the title of the purchaser due to noncompliance with statutes governing the sale of land for taxes or proceedings leading up to such sales so far as the right to object to defects and irregularities is not barred by the statutes of limitation or by statutes purporting to cure irregularities and defects in tax proceedings<sup>10</sup> or making the tax deed conclusive evidence of the facts recited therein as to the regularity of the proceedings.<sup>11</sup>

A valid tax title, like any other record title, will be defeated by adverse possession for the statutory period by the original owner or any other party if the purchaser fails to take possession when entitled to do so.<sup>12</sup> On the other hand, pursuant to statute, a tax deed title may ripen by prescription into a fee simple title following adverse possession by the tax deed grantee for the statutory period.<sup>13</sup> A tax deed holder's occasional mowing of the premises and payment of taxes on the premises, however, will not constitute actual possession as required to enable a tax deed title to ripen by prescription into fee simple.<sup>14</sup>

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Footnotes

- 1 O'Connor v. Rabren, 373 So. 2d 302 (Ala. 1979).
- 2 Gilbert v. Waller, 907 So. 2d 175 (La. Ct. App. 2d Cir. 2005), writ denied, 922 So. 2d 1178 (La. 2006).
- 3 Brown Inv. Group, LLC v. Mayor and Aldermen of City of Savannah, 289 Ga. 67, 709 S.E.2d 214 (2011).
- 4 In re Hammond, 420 B.R. 633 (Bankr. W.D. Pa. 2009) (applying Pennsylvania law); Brown Inv. Group, LLC v. Mayor and Aldermen of City of Savannah, 289 Ga. 67, 709 S.E.2d 214 (2011).
- 5 § 854.
- 6 Brown Inv. Group, LLC v. Mayor and Aldermen of City of Savannah, 289 Ga. 67, 709 S.E.2d 214 (2011).
- 7 Steltz v. Morgan, 16 Idaho 368, 101 P. 1057 (1909).
- 8 BX Corp. v. Hickory Hill 1185, LLC, 285 Ga. 5, 673 S.E.2d 205 (2009).
- 9 Martin v. Kentucky Lands Inv. Co., 146 Ky. 525, 142 S.W. 1038 (1912).
- 10 § 860.
- 11 § 887.
- 12 Linville v. Russell, 168 Colo. 459, 452 P.2d 18 (1969).  
As to possession under a tax deed constituting adverse possession, generally, see Am. Jur. 2d, Adverse Possession § 138.
- 13 Washington v. McKibbin Hotel Group, Inc., 284 Ga. 262, 664 S.E.2d 201 (2008).
- 14 Washington v. McKibbin Hotel Group, Inc., 284 Ga. 262, 664 S.E.2d 201 (2008).

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## 72 Am. Jur. 2d State and Local Taxation § 854

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LIX. Rights and Title of Purchaser

##### A. In General

##### 1. General Principles

## § 854. Right to rents and profits

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3078

Although there is authority to the contrary,<sup>1</sup> (under New York law, where treasurer's deed is validly issued to tax sales purchaser prepetition, giving debtor mere right of redemption, debtor has no interest in rents from property) while the purchaser at a tax sale or the purchaser of a tax certificate is not entitled during the redemption period to rents, profits, and issues of the land<sup>2</sup> against which delinquent taxes are assessed, unless given that right by statute,<sup>3</sup> or unless given the right to the possession of the land,<sup>4</sup> the purchaser's rights may depend on the terms of the particular statutory provision involved and the equities of the particular situation as between the parties.<sup>5</sup> In some jurisdictions, the purchaser is not chargeable with rents prior to a tender of the amount necessary to redeem but is to be charged with rents received after such tender.<sup>6</sup> In the absence of any statutory right to rents and profits, or of any right to possession of the premises, the purchaser must, if he or she in fact receives the rent and profits during the redemption period, ordinarily account for them to the owner when he or she redeems.<sup>7</sup> The reason is that under most redemption laws, the redemptioner must not only repay the amount of the delinquent taxes and penalties paid by the tax sale purchaser but must also pay interest thereon as well, which is considered as giving the purchaser an equivalent of rents and profits.<sup>8</sup>

From and after the execution of the tax deed conveying the full title, the purchaser is entitled to all the rent issues and profits of the land.<sup>9</sup> Assuming the tax sale purchaser's title is not a derivative one, but a new and independent grant from the sovereign,<sup>10</sup> the former owner cannot claim to be entitled to subsequent rentals merely because the property continues to be occupied by a tenant, against whom the purchasers at the sale fail to bring ouster proceedings to gain immediate possession of the property.<sup>11</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Purchaser of land at tax sale obtained tax title which did not entitle him to possession, rents, issues, or profits during the time period allowed for redemption. West's [Ga.Code Ann. § 48–4–40 et seq.](#) [Small v. Irving](#), 729 S.E.2d 323 (Ga. 2012).

### [END OF SUPPLEMENT]

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### Footnotes

- 1 [In re R.A. Hendrickson Real Estate, Inc.](#), 395 B.R. 565 (Bankr. E.D. N.Y. 2008).
- 2 [Brown Inv. Group, LLC v. Mayor and Aldermen of City of Savannah](#), 289 Ga. 67, 709 S.E.2d 214 (2011).
- 3 [Brewer v. Fletcher](#), 210 Ark. 110, 194 S.W.2d 668 (1946).
- 4 [Hutchison v. Kerr](#), 1943 OK 191, 193 Okla. 30, 140 P.2d 918, 147 A.L.R. 1081 (1943).
- 5 [Elliott v. Parker](#), 72 Iowa 746, 32 N.W. 494 (1887).
- 6 [Hutchison v. Kerr](#), 1943 OK 191, 193 Okla. 30, 140 P.2d 918, 147 A.L.R. 1081 (1943).
- 7 [Strang v. Burris](#), 61 Iowa 375, 16 N.W. 285 (1883).
- 8 [Coffin v. Maitland](#), 142 Neb. 1, 5 N.W.2d 88 (1942).  
As to redemption, generally, see §§ 889 to 931.
- 9 [King County v. Odman](#), 8 Wash. 2d 32, 111 P.2d 228, 133 A.L.R. 1440 (1941).
- 10 § 863.
- 11 [Teget v. Lambach](#), 226 Iowa 1346, 286 N.W. 522, 123 A.L.R. 392 (1939).

## 72 Am. Jur. 2d State and Local Taxation § 855

American Jurisprudence, Second Edition | May 2021 Update

### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

### LIX. Rights and Title of Purchaser

#### A. In General

#### 1. General Principles

## § 855. As between purchaser and tenant of former owner

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3065

As between the tax sale purchaser and a tenant of the former owner in possession under a lease executed prior to the execution of the tax deed, rights and liabilities are governed by the local rule as to the nature of the title of the tax sale purchaser as a new and paramount title emanating from the sovereign or as a title derivative from the former owner.<sup>1</sup> Assuming that the tax deed creates a new and paramount title, its effect is to extinguish an existing lease given by the former owner so that no relation of landlord and tenant between the holder of the tax deed and the person in possession under the lease given by the former owner is created by the sale and purchase.<sup>2</sup> An offer by the lessee to pay rent to the purchaser will not create such relation if the offer is not accepted.<sup>3</sup> When, however, the title under the tax deed is considered merely as a derivative one, the general rules governing transfer of the landlord's reversion apply.<sup>4</sup>

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### Footnotes

- <sup>1</sup> §§ 863, 867.
- <sup>2</sup> [Carlson v. Curran](#), 42 Wash. 647, 85 P. 627 (1906).
- <sup>3</sup> [Carlson v. Curran](#), 42 Wash. 647, 85 P. 627 (1906).
- <sup>4</sup> [Am. Jur. 2d, Landlord and Tenant](#) §§ 897 to 905.

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## 72 Am. Jur. 2d State and Local Taxation § 856

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LIX. Rights and Title of Purchaser


##### A. In General

##### 1. General Principles

## § 856. Effect of delay in payment of bid

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2991, 3145

The mere fact of delay by tax authorities in collecting the bid, as a matter of convenience or because of their inability to comply with the requirements of the law within the prescribed time after the sale, does not affect the validity of the tax title.<sup>1</sup> The important thing from the standpoint of the State is that the sale is conducted regularly and in accordance with the statute so that the State may receive the purchase price paid for the land at the sale.<sup>2</sup> However, the sale may be invalidated by the purchaser's delay in making payment when the purchaser is responsible for that delay.<sup>3</sup>

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### Footnotes

- 1 [In re Auditor General](#), 275 Mich. 53, 265 N.W. 763, 104 A.L.R. 813 (1936).
- 2 [In re Auditor General](#), 275 Mich. 53, 265 N.W. 763, 104 A.L.R. 813 (1936).
- 3 [Semmes v. Fuller](#), 263 Mich. 214, 248 N.W. 599 (1933).

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## 72 Am. Jur. 2d State and Local Taxation § 857

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LIX. Rights and Title of Purchaser

##### A. In General

##### 2. Purchase by State or Municipality

## § 857. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2971

### Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 149](#) (Judgment or decree—Foreclosing liens for unpaid taxes on real property—Establishment of state as owner)

Under some tax sale statutes, if at the tax sale no one bids the amount of the tax and charges of sale, the land must be struck off to the body politic by which the tax was imposed and, after being held until the period of redemption has expired, must then be sold to private purchasers at public or private sale.<sup>1</sup> Under other statutes, when a governing body of a taxing authority is required to buy in and hold property at a tax sale due to the absence of private bidders, but the taxing authority does not foreclose on the right of redemption within two years of the issuance of the tax sale certificate, only the tax certificate is void and not the tax lien for the benefit of the taxing authority.<sup>2</sup>

The same strictness in complying with the provisions of law is required when the purchase is by the State or by a municipality as when the sale is made to an individual.<sup>3</sup> Such a defect or any other defect or irregularity or informality in the proceedings by which the State acquires the land may be set up in proceedings brought against the purchaser to recover the land<sup>4</sup> so long as the

right to do so is not barred by statutory limitations of time<sup>5</sup> or by curative legislation.<sup>6</sup> However, after the period of redemption has expired, the former owner has no interest in the property and cannot set up any informality in the proceedings by which the State subsequently disposed of the lands.<sup>7</sup>

When the body politic by which the tax was levied bids on the land, it is not obliged to go through the useless form of paying the price with one hand and receiving it with the other, but on the consummation of the sale, the payment is in legal effect made.<sup>8</sup> A statutory provision that in case of a tax sale the deed is prima facie evidence that the provisions of the statute with respect to the sale have been fully complied with has no application to a sale to the State when no deed is provided for in such case.<sup>9</sup> Legislation relating to the sale of land for taxes is not invalidated by a void provision that delinquent taxes held by the State might, if the property had previously been sold for taxes to a purchaser other than the State, be satisfied in full by payment of a fraction of the amount originally assessed.<sup>10</sup>

Where lands have been struck off to the State for state and county taxes, and the sale is valid on its face, and the State and the county are inseparably bound into the state's tax title, the county cannot, without having the State joined as a party, maintain an action for the county taxes against the former owner of the lands on the theory that the tax sale to the State was void.<sup>11</sup>

If the price bid is in excess of the tax and intervening charges, the owner is entitled to be paid the surplus in the same manner as if the price had been actually paid by a private purchaser.<sup>12</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Statute providing that when real property is sold for nonpayment of taxes, title related back to first day of July of year in which the unpaid taxes were assessed, rather than statute providing that property held by State was not taxed, applied to purchasers of lien on mineral interests that were delinquent because of unpaid property taxes, and thus purchasers were liable for back taxes, though property was sold by county's commissioner of delinquent and nonentered lands after county sheriff certified lien on property to State Auditor's Office as commissioner of delinquent and nonentered lands; State never held the property given that title to delinquent property that had been certified to Auditor remained with delinquent owner until lien was purchased and purchaser secured deed to property. *W. Va. Code Ann. §§ 11-4-13, 11A-3-8, 11A-3-62(a). Ancient Energy, Ltd. v. Ferguson*, 806 S.E.2d 154 (W. Va. 2017).

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### Footnotes

- 1 *Harris v. Mason*, 120 Tenn. 668, 115 S.W. 1146 (1909).
- 2 *Quillens v. Moore*, 399 Md. 97, 923 A.2d 15 (2007).
- 3 *Harris v. Mason*, 120 Tenn. 668, 115 S.W. 1146 (1909).
- 4 *Harris v. Mason*, 120 Tenn. 668, 115 S.W. 1146 (1909).
- 5 §§ 952, 953.
- 6 § 860.
- 7 *Quaker Realty Co. v. Labasse*, 131 La. 996, 60 So. 661 (1912).
- 8 *Pereles v. Meyer*, 213 Wis. 232, 251 N.W. 255 (1933).
- 9 *Ayers v. Lund*, 49 Or. 303, 89 P. 806 (1907).

10 State ex rel. Matteson v. Luecke, 194 Minn. 246, 260 N.W. 206, 99 A.L.R. 1053 (1935).  
11 Carrier Lumber & Mfg. Co. v. Quitman County, 156 Miss. 396, 124 So. 437 (1929).  
12 U.S. v. Lawton, 110 U.S. 146, 3 S. Ct. 545, 28 L. Ed. 100 (1884).

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## 72 Am. Jur. 2d State and Local Taxation § 858

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LIX. Rights and Title of Purchaser

##### A. In General

##### 2. Purchase by State or Municipality

## § 858. Rights and title acquired

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2973

After forfeiture of property to the State for failure to pay taxes, and during the time allowed for redemption, the State possesses an inchoate title to the land which may or may not ripen into a perfect title.<sup>1</sup> A taxing authority's purchase of tax sale certificates evidences payment as a matter of law and extinguishes the taxpayer's personal liability and gives the taxing authority all the rights of the holder of a tax certificate.<sup>2</sup> Thus, a taxing authority buying property at a sale under a tax foreclosure instituted by it takes a new and independent title based on the foreclosure decree and has no different or additional rights than would have been acquired by any other purchaser at the sale.<sup>3</sup> Where the land is afterward conveyed to a private purchaser, the title conveyed is a title in fee.<sup>4</sup> The tax lien of the body politic which imposed the tax is merged when the land is purchased.<sup>5</sup> If, under a statute governing tax resales, title to lands sold to a county is taken in the name of the chairperson of the board of county commissioners, and all of the income and proceeds from the sale of the lands is to be devoted to local purposes, a title thus acquired by a county is held exclusively for the benefit of the county and its political subdivisions and is not vested in the State or held in trust for it.<sup>6</sup> However, a county purchasing and foreclosing a tax sale certificate on real estate does so as trustee for the use and benefit of the State and all other governmental subdivisions entitled to participate in the distribution of the proceeds.<sup>7</sup>

A political subdivision, as purchaser at a tax sale, has no rights superior to those of an individual claimant.<sup>8</sup>

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Footnotes

- 1 [Smith v. Jackson State University](#), 995 So. 2d 88 (Miss. 2008).
- 2 [Canino v. Engelstein](#), 43 N.Y.2d 922, 403 N.Y.S.2d 733, 374 N.E.2d 627 (1978).
- 3 [Smith v. City of Arcadia](#), 147 Fla. 375, 2 So. 2d 725, 135 A.L.R. 1458 (1941).
- 4 [Toolan v. Longyear](#), 144 Mich. 55, 107 N.W. 699 (1906), [aff'd](#), 209 U.S. 414, 28 S. Ct. 506, 52 L. Ed. 859 (1908).
- 5 [State v. Moak](#), 146 Tex. 322, 207 S.W.2d 894 (1948).
- 6 [State ex rel. Com'rs of Land Office v. Passmore](#), 1941 OK 100, 189 Okla. 232, 115 P.2d 120, 136 A.L.R. 324 (1941).
- 7 [INA Group, LLC v. Young](#), 271 Neb. 956, 716 N.W.2d 733 (2006).
- 8 [Smith v. City of Arcadia](#), 147 Fla. 375, 2 So. 2d 725, 135 A.L.R. 1458 (1941).

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## 72 Am. Jur. 2d State and Local Taxation § 859

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LIX. Rights and Title of Purchaser

##### A. In General

##### 2. Purchase by State or Municipality

## § 859. Effect of special, future, and further assessments

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2971](#)

### A.L.R. Library

[Tax sale as freeing property from possibility of further assessments for benefits to land, 11 A.L.R.2d 1133](#)

While, generally, the lien of a special assessment is subordinate to liens for general taxes and is cut off by a sale of land to satisfy the general tax liens,<sup>1</sup> by the terms of some statutes, forfeiture or sale of land to the State or to some political subdivision for nonpayment of taxes does not abate or cancel a lien for special assessments, which is held in abeyance during the period when the property is owned by the public body, and becomes effective against it immediately upon the passing of the title to a private purchaser from such public body.<sup>2</sup> In other jurisdictions, it is assumed that the lien is not extinguished by forfeiture or sale of the land to the State even in the absence of a statutory declaration to that effect; however, the right to enforce the lien is suspended during the time to which the title to the land is in the state, and an attempted sale of the land to enforce the lien for the special assessment during that time is void.<sup>3</sup>

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Footnotes

- 1                    § 799.
- 2                    City of Biloxi v. Lowery, 179 Miss. 364, 175 So. 200 (1937).
- 3                    Miller v. Watkins, 194 Ark. 863, 111 S.W.2d 466 (1937).

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## 72 Am. Jur. 2d State and Local Taxation § 860

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LIX. Rights and Title of Purchaser

##### A. In General

##### 3. Statutes Curative of Defect in Tax Title

## § 860. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2988, 3115

The power of the legislature when not otherwise restricted by special constitutional limitation to enact curative legislation remedying tax titles invalidated or subject to be invalidated by reason of defects and irregularities in tax sale proceedings or in proceedings prior or subsequent to the tax sale depends on whether the defects sought to be cured are jurisdictional defects or merely irregularities in failing to comply with directory matters.<sup>1</sup> The essential requisites of the exercise of the power of taxation which must be observed in order that the owner's title may be divested or transferred to another by the sale of land for nonpayment of taxes cannot be dispensed with.<sup>2</sup>

The legislature may, by way of curative legislation, exempt tax deeds and tax titles from attack for irregularities or omissions in the procedural steps leading up to a tax sale, or for irregularities arising from the failure of officials conducting the tax sale to comply with requirements of the statutes, which the legislature in setting up the system providing for the sale of land for unpaid taxes, and the transfer of title to the purchaser at the tax sale might have dispensed with in the first place had it seen fit to do so.<sup>3</sup> It may not, however, by way merely of curative legislation, cut off all rights to attack a tax deed or tax title for failure to comply with requirements of a jurisdictional nature constituting essential prerequisites to the validity of the title or deed.<sup>4</sup>

A state statute immunizing tax titles from attack because of certain irregularities and informalities in the proceedings prior to the tax sale creates in one who purchased a tax title from the State while the statute was in force a contract right although the conveyance was by quitclaim deed, which contract right cannot be impaired by the subsequent repeal of the statute.<sup>5</sup> The effect of a judgment determining a tax to be invalid cannot be nullified by the subsequent enactment of a legalizing statute.<sup>6</sup>

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Footnotes

- 1 [Dunham v. Davis](#), 229 S.C. 29, 91 S.E.2d 716 (1956).  
As to the constitutionality of curative statutes, generally, see [Am. Jur. 2d, Constitutional Law § 781](#).
- 2 [Marx v. Hanthorn](#), 148 U.S. 172, 13 S. Ct. 508, 37 L. Ed. 410 (1893); [Gates v. Morris](#), 123 W. Va. 6, 13 S.E.2d 473, 134 A.L.R. 791 (1941).
- 3 [Straus v. Foxworth](#), 231 U.S. 162, 34 S. Ct. 42, 58 L. Ed. 168 (1913).
- 4 [Saranac Land & Timber Co. v. Roberts](#), 177 U.S. 318, 20 S. Ct. 642, 44 L. Ed. 786 (1900); [Dunham v. Davis](#), 229 S.C. 29, 91 S.E.2d 716 (1956).  
As to statutes making tax deeds conclusive evidence of matters preliminary to the issuance thereof but not jurisdictional, see §§ [887](#), [888](#).
- 5 [Wood v. Lovett](#), 313 U.S. 362, 61 S. Ct. 983, 85 L. Ed. 1404 (1941).
- 6 [McManus v. Hornaday](#), 124 Iowa 267, 100 N.W. 33 (1904).

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## 72 Am. Jur. 2d State and Local Taxation § 861

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LIX. Rights and Title of Purchaser

##### A. In General

##### 3. Statutes Curative of Defect in Tax Title

## § 861. What defects are curable

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2988, 3115

Although there is no ready formula for determining whether a defect in a tax sale proceeding or in the proceeding leading up thereto is jurisdictional, within the rule defining the limits of the power to enact curative legislation, irregularities in the personal conduct of the officer making the sale are not jurisdictional.<sup>1</sup> The legislature may constitutionally provide that a tax sale will not be invalid because of irregularities with respect to the time of the sale, such as a sale at a time other than that prescribed or a sale subsequent to the prescribed time without any proper adjournment to that date.<sup>2</sup> Under some circumstances, however, defects as to the time of sale are regarded as jurisdictional and curative statutes are inapplicable to irregularities of this kind.<sup>3</sup>

Legislation curative of defects in tax titles is valid as applied to—

- sales for an excessive amount.<sup>4</sup>
- sales of excessive quantities of land and failure to offer less quantities than sold.<sup>5</sup>
- a failure to sell land in separate parcels as assessed.<sup>6</sup>
- irregularities in selling to an officer forbidden by policy of the law to be a purchaser.<sup>7</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Four-year statute of limitations applicable to challenges to tax titles could not be applied to bar quiet title action brought by mineral interest owners after tax sale was conducted in violation of owners' due process rights, despite contention that constructive notice of tax sale was sufficient to trigger statute of limitations without violating due process; statute was not self-executing time bar, but was limitations period that was triggered by county's adversarial action and sale of property at tax sale, and names and addresses of owners were reasonably ascertainable, rendering constructive notice insufficient; overruling *Hansen v. Morris*, 3 Utah 2d 310, 283 P.2d 884. U.S. Const. Amend. 14, § 1; Utah Const. art. 1, § 7; Utah Code Ann. § 78B-2-206. *Jordan v. Jensen*, 2017 UT 1, 391 P.3d 183 (Utah 2017).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 [Turpin v. Lemon](#), 187 U.S. 51, 23 S. Ct. 20, 47 L. Ed. 70 (1902).
- 2 [Maxwell v. Page](#), 23 N.M. 356, 168 P. 492, 5 A.L.R. 155 (1917).
- 3 [Hardman v. Brannon](#), 70 W. Va. 726, 75 S.E. 74 (1912).
- 4 [Larson v. Dickey](#), 39 Neb. 463, 58 N.W. 167 (1894).
- 5 [Martin v. Cole](#), 38 Iowa 141, 1874 WL 259 (1874).
- 6 [Saranac Land & Timber Co. v. Roberts](#), 177 U.S. 318, 20 S. Ct. 642, 44 L. Ed. 786 (1900).
- 7 [Waggoner v. Mann](#), 83 Iowa 17, 48 N.W. 1065 (1891).  
As to the rule that the officer conducting a judicial sale cannot purchase property sold at such sale, generally, see § 847.



## 72 Am. Jur. 2d State and Local Taxation § 862

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LIX. Rights and Title of Purchaser

##### A. In General

##### 3. Statutes Curative of Defect in Tax Title

## § 862. Want of notice

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2988, 3115

Generally, a want of notice required by statute in tax sale proceedings is a jurisdictional defect which cannot be remedied by curative legislation.<sup>1</sup> Also, a statutory requirement of notice of application for a tax deed, or of notice of expiration of the right to redeem from a tax sale, is a jurisdictional prerequisite to the issuance of the tax deed or the cutting off of the right of redemption.<sup>2</sup> Accordingly, curative statutes do not protect a tax title or deed from a tax sale for want of such notice.<sup>3</sup> Some courts, however, regard requirements as to such notice as merely directory and allow curative legislation to obviate an irregularity in failing to give notice or in the notice as given.<sup>4</sup> In considering the validity or applicability of curative laws where there has been failure to comply with statutory requirements of notice, some courts draw a distinction between an irregularity in the notice as given and a defect arising from the entire want of notice; generally, mere irregularities in the notice given fall within the operation of curative laws, and these laws may validly be made applicable thereto.<sup>5</sup>

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### Footnotes

- 1 [Marx v. Hanthorn](#), 148 U.S. 172, 13 S. Ct. 508, 37 L. Ed. 410 (1893); [Gates v. Morris](#), 123 W. Va. 6, 13 S.E.2d 473, 134 A.L.R. 791 (1941).
- 2 [§§ 911 et seq.](#)
- 3 [Gates v. Morris](#), 123 W. Va. 6, 13 S.E.2d 473, 134 A.L.R. 791 (1941).
- 4 [Williams v. Van Pelt](#), 35 N.M. 286, 295 P. 418 (1930).

5 [Coulter v. Gough, 80 N.M. 312, 454 P.2d 969 \(1969\).](#)

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## 72 Am. Jur. 2d State and Local Taxation Eleven LIX B Refs.

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### Part Eleven. Sale of Land for Nonpayment of Taxes

### LIX. Rights and Title of Purchaser

### B. Nature of Title and Quantum of Purchaser's Estate

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2731](#), [3063](#), [3068](#), [3105](#), [3120](#), [3126](#), [3128](#)

### A.L.R. Library

A.L.R. Index, Tax Sales

West's A.L.R. Digest, [Taxation](#)  [2731](#), [3063](#), [3068](#), [3105](#), [3120](#), [3126](#), [3128](#)

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## 72 Am. Jur. 2d State and Local Taxation § 863

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LIX. Rights and Title of Purchaser

#### B. Nature of Title and Quantum of Purchaser's Estate

## § 863. Tax title as new and paramount title

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2731](#), [3063](#), [3105](#), [3120](#)

A valid tax deed totally destroys the antecedent estate of the former owner, cuts off all the former owner's rights, and vests all the former owner's right, title, and interest in the grantee named in the deed.<sup>1</sup> Generally, in jurisdictions where the tax is a charge on the land alone, where no resort in any event is contemplated against the owner or the owner's personal estate, and where the proceeding is strictly in rem, the title conveyed by the tax deed pursuant to a valid sale of land for nonpayment of taxes is not merely the title of the person who was assessed for the taxes and neglected to pay them but is a new, complete, and paramount title to the land in fee simple absolute, created by an independent grant from the sovereign, which extinguishes all prior titles, rights, interests, and encumbrances of private persons and all equities arising therefrom, not expressly exempted from its operation although owned or held by persons not liable for the tax or by persons who were not in default for not paying it.<sup>2</sup>

The rule that a tax deed creates a new title by independent grant from the government does not apply where the transaction is but a subterfuge; a tax title secured by means of a wrongful conspiracy between the holder of the tax certificate and one under obligation to protect against a tax title, by which the latter divests himself or herself of his or her mortgage lien or otherwise avoids an obligation, is void and passes no title.<sup>3</sup> It does not apply where the purchaser is the owner of the property.<sup>4</sup> Also, a separately valued and taxed interest may not be extinguished by a tax sale so long as taxes assessed to that interest are not delinquent.<sup>5</sup>

### CUMULATIVE SUPPLEMENT

**Cases:**

The legislature intended for tax deeds to provide a tax buyer with a new and independent title, free and clear from all previous titles and claims of every kind, and assurance to the tax buyer that his title and rights to the property would be unimpaired. S.H.A. 35 ILCS 200/1–1 et seq. *Excalibur Energy Co. v. Rochman*, 387 Ill. Dec. 277, 22 N.E.3d 322 (App. Ct. 5th Dist. 2014).

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**Footnotes**

- 1 [Webermeier v. Pace](#), 193 Colo. 157, 563 P.2d 950 (1977).
- 2 [Hefner v. Northwestern Mut. Life Ins. Co.](#), 123 U.S. 747, 8 S. Ct. 337, 31 L. Ed. 309 (1887); [Meyer v. Haskett](#), 251 P.3d 1287 (Colo. App. 2010); [Burke v. Pierro](#), 159 N.H. 504, 986 A.2d 538 (2009); [Mittelmark v. County of Saratoga](#), 85 A.D.3d 1359, 925 N.Y.S.2d 235 (3d Dep't 2011); [Scarberry v. Lawless](#), 2010-Ohio-3395, 2010 WL 2838531 (Ohio Ct. App. 4th Dist. Lawrence County 2010), appeal not allowed, 127 Ohio St. 3d 1446, 2010-Ohio-5762, 937 N.E.2d 1036 (2010); [Topps v. County of Walworth](#), 260 Wis. 2d 225, 2003 WI App 30, 659 N.W.2d 177 (Ct. App. 2003).  
As to the marketability of titles based on tax sales, see [Am. Jur. 2d, Vendor and Purchaser § 146](#).
- 3 [Koch v. Kiron State Bank of Kiron](#), 230 Iowa 206, 297 N.W. 450, 140 A.L.R. 273 (1941).
- 4 [Tuft v. Federal Leasing](#), 657 P.2d 1300 (Utah 1982).
- 5 [Thirteen South Ltd. v. Summit Village, Inc.](#), 109 Nev. 1218, 866 P.2d 257 (1993).

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## 72 Am. Jur. 2d State and Local Taxation § 864

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LIX. Rights and Title of Purchaser

#### B. Nature of Title and Quantum of Purchaser's Estate

## § 864. Tax title as new and paramount title—Applications of rule

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2731](#), [3063](#), [3105](#), [3120](#)

### A.L.R. Library

[Easement, servitude, or covenant as affected by sale for taxes, 7 A.L.R.5th 187](#)

In jurisdictions where a tax title is a new and paramount title created by grant from the sovereign, a deed given pursuant to a valid and regular tax sale extinguishes—

- the lien of a preexisting mortgage or deed of trust.<sup>1</sup>
- the lien of a judgment.<sup>2</sup>
- the lien of a special assessment.<sup>3</sup>
- a lien of tax bills issued to a contractor to pay for public improvements.<sup>4</sup>
- the lien of an irrigation company for maintenance charges on the land sold.<sup>5</sup>

— a landlord's lien.<sup>6</sup>

— a claim of homestead.<sup>7</sup>

— a claim of ownership to disputed property through adverse possession.<sup>8</sup>

— the lien of attaching creditors.<sup>9</sup>

— an otherwise-valid security interest in a mobile home attached to the real property in question.<sup>10</sup>

— ground rents and rent charges.<sup>11</sup>

Although under the governing rule, easements and restrictions upon the land sold would be extinguished by a sale for nonpayment of taxes, some courts decline to apply the principle in such a drastic form and hold that a tax sale does not extinguish an easement, servitude, or restrictive covenant.<sup>12</sup>

A tax sale extinguishes the right of a grantor under the provisions of the deed to enforce a forfeiture for breach of a condition subsequent where, by statutory provision, a tax deed operates to convey an absolute title free from all encumbrances.<sup>13</sup>

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#### Footnotes

- 1 Hefner v. Northwestern Mut. Life Ins. Co., 123 U.S. 747, 8 S. Ct. 337, 31 L. Ed. 309 (1887); Buk Lhu v. Dignoti, 431 Mass. 292, 727 N.E.2d 73 (2000).
- 2 In re Upset Sale, Tax Claim Bureau of Berks County, 505 Pa. 327, 479 A.2d 940 (1984).
- 3 Ellis v. City of Yankton, 526 N.W.2d 124 (S.D. 1995).
- 4 Franklin Securities Co. v. Clay, 1930 OK 536, 146 Okla. 102, 293 P. 529 (1930).
- 5 Andrews v. North Side Canal Co., 52 Idaho 117, 12 P.2d 263 (1932).
- 6 Smith v. Hughes, 1929 OK 118, 135 Okla. 296, 275 P. 628, 65 A.L.R. 573 (1929).
- 7 Shell v. Duncan, 31 S.C. 547, 10 S.E. 330 (1889).
- 8 Killion v. Meeks, 333 Ill. App. 3d 1188, 268 Ill. Dec. 84, 777 N.E.2d 1007 (5th Dist. 2002).
- 9 Buk Lhu v. Dignoti, 431 Mass. 292, 727 N.E.2d 73 (2000).
- 10 Greentree Servicing, LLC v. Decanio, 948 So. 2d 1033 (Fla. 5th DCA 2007).
- 11 Turner v. Smith, 81 U.S. 553, 20 L. Ed. 724, 1871 WL 14795 (1871).
- 12 Am. Jur. 2d, Covenants, Conditions, and Restrictions § 233; Am. Jur. 2d, Easements and Licenses § 105.
- 13 Alamogordo Improvement Co. v. Prendergast, 43 N.M. 245, 91 P.2d 428, 122 A.L.R. 1277 (1939).

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## 72 Am. Jur. 2d State and Local Taxation § 865

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### Part Eleven. Sale of Land for Nonpayment of Taxes


#### LIX. Rights and Title of Purchaser

#### B. Nature of Title and Quantum of Purchaser's Estate

## § 865. Mineral and timber rights

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3063, 3120

A tax deed to minerals vests in the grantee title to the entire mineral estate, subject to any right of redemption provided by law.<sup>1</sup> Under some statutes, mineral rights underlying land sold for taxes, belonging to someone other than the owner of the surface against whom the taxes were assessed, pass to the purchaser at a tax sale unless the surface and the minerals are separately assessed.<sup>2</sup> Some courts, however, take the view that where mineral rights may be assessed and taxed separately from surface rights and interests, and real estate is sold as property of the owner of the surface, the purchaser is not vested with title to minerals owned separately from the surface at least where the description of the property in the tax proceeding neither expressly includes nor excepts mineral rights.<sup>3</sup> At any rate, a possibility of reverter in a mineral estate will go to the purchaser of the surface estate at a tax foreclosure sale of the land where the possibility of reverter has never been severed from the surface estate.<sup>4</sup>

Where there is an outstanding unproductive mineral interest at the time of a mortgage of lands to the State, which interest is not separately assessed, and the mortgage is subsequently foreclosed and the property sold to the mortgagee, a statute providing for the cancellation of all taxes, tax sales, and tax deeds when the State acquires title to land is effective to cancel all such taxes, tax sales, and tax deeds as to the outstanding mineral interest.<sup>5</sup> Whether the purchaser at the tax sale acquires timber and timber rights owned by a person other than the owner of the land, against whom the tax sale proceedings were had, depends on the application of the same principles governing the question of whether mineral rights underlying the surface pass.<sup>6</sup>

A sheriff's deed resulting from a judicial foreclosure of the minerals in place on property subject to the terms of an oil, gas, and mineral lease for failure to pay ad valorem tax does not convey title to the proceeds or minerals that had been previously removed from the land.<sup>7</sup>



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Footnotes

- 1 [Pickens v. Adams](#), 7 Ill. 2d 283, 131 N.E.2d 38, 56 A.L.R.2d 605 (1955).
- 2 [Dingess v. Huntington Development & Gas Co.](#), 271 F. 864 (C.C.A. 4th Cir. 1921).
- 3 [Garvan v. Potlatch Corp.](#), 278 Ark. 414, 645 S.W.2d 957 (1983).
- 4 [Pounds v. Jurgens](#), 296 S.W.3d 100 (Tex. App. Houston 14th Dist. 2009), review denied, (Oct. 22, 2010).
- 5 [State ex rel. Com'rs of Land Office v. Continental Oil Co.](#), 1954 OK 134, 273 P.2d 1002 (Okla. 1954).
- 6 [Bodcaw Lumber Co. of Louisiana v. Cox](#), 159 La. 810, 106 So. 313 (1925).
- 7 [Hill v. Enerlex, Inc.](#), 969 S.W.2d 120 (Tex. App. Eastland 1998).

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## 72 Am. Jur. 2d State and Local Taxation § 866

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### State and Local Taxation

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### Part Eleven. Sale of Land for Nonpayment of Taxes


#### LIX. Rights and Title of Purchaser

#### B. Nature of Title and Quantum of Purchaser's Estate

## § 866. Land subject to delinquent taxes for successive years

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3068, 3128

Because a tax sale conveys a new and paramount title free from all estates and encumbrances, when the taxes are unpaid on a piece of property for a number of successive years and it is sold in due course for the taxes of each of such years, the purchaser at the sale for the taxes of the latest year takes the land free from any lien for delinquent taxes of former years.<sup>1</sup> The subsequent sale of land for taxes prevails over prior tax titles and over any similar deed for the tax of the previous year.<sup>2</sup>

A sale of land for the taxes of one year does not affect the liability of the land to be sold for the taxes of a later year assessed prior to such sale since while the first purchaser acquires a new and paramount title, the second purchaser acquires also a paramount title superior to that of the first.<sup>3</sup>

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### Footnotes

- <sup>1</sup> [Allen v. State Mortg. Corporation, 12 S.W.2d 249 \(Tex. Civ. App. San Antonio 1928\).](#)
- <sup>2</sup> [Allen v. State Mortg. Corporation, 12 S.W.2d 249 \(Tex. Civ. App. San Antonio 1928\).](#)
- <sup>3</sup> [Harding v. Auditor General, 140 Mich. 646, 104 N.W. 39 \(1905\).](#)

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## 72 Am. Jur. 2d State and Local Taxation § 867

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### Part Eleven. Sale of Land for Nonpayment of Taxes

### LIX. Rights and Title of Purchaser

### B. Nature of Title and Quantum of Purchaser's Estate

## § 867. View that purchaser gets no better title than tax delinquent

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2731](#), [3063](#), [3120](#)

Where proceedings for the collection of taxes upon real estate are in personam against the person assessed, the purchaser at a tax sale gets no better title than what was held by the person against whom the taxes were assessed or the proceedings taken<sup>1</sup> or than that held by the persons entitled to redeem.<sup>2</sup> According to this view, the title is a derivative one, and the purchaser acquires only the apparent interest, whatever it is, of the tax delinquent.<sup>3</sup>

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### Footnotes

- <sup>1</sup> [Gould v. Day](#), 94 U.S. 405, 24 L. Ed. 232, 1876 WL 19519 (1876); [Morse v. King](#), 137 Vt. 49, 398 A.2d 299 (1979).
- <sup>2</sup> [Rollyson v. Jordan](#), 205 W. Va. 368, 518 S.E.2d 372 (1999).
- <sup>3</sup> [Gauger v. State](#), 249 Kan. 86, 815 P.2d 501 (1991) (one who buys at a tax sale buys only the interest of the owner).

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## 72 Am. Jur. 2d State and Local Taxation § 868

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LIX. Rights and Title of Purchaser

#### B. Nature of Title and Quantum of Purchaser's Estate

## § 868. Effect of parity of derivative liens

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3120](#), [3126](#)

Where title passes to both purchasers at sales to enforce liens enjoying a parity as to each other, the claimants are tenants in common.<sup>1</sup> Where the tax liens of different governmental agencies or subdivisions are regarded, under the applicable statutes, as being on a parity and without priorities as between themselves, one claimant cannot secure a judicial recognition of his or her title to the land, as by a decree quieting title in him or her or an order annulling or setting aside the other liens, as against the other claimants.<sup>2</sup> The lien under which one person claims may not be foreclosed in such a way as to extinguish other liens enjoying parity therewith.<sup>3</sup> The claimants under all liens enjoying parity with each other are entitled to share ratably in the proceeds of any sale of the property.<sup>4</sup> A parity once existing may be lost by some subsequent development, such as the foreclosure of one of the equal liens and a conveyance of the property to the lienholder.<sup>5</sup>

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### Footnotes

- <sup>1</sup> [Monheit v. Cigna](#), 28 Cal. 2d 19, 168 P.2d 965, 167 A.L.R. 995 (1946).
- <sup>2</sup> [La Mesa Lemon Grove and Spring Valley Irr. District v. Hornbeck](#), 216 Cal. 730, 17 P.2d 143 (1932).
- <sup>3</sup> [Allison Realty Co. v. Graves Inv. Co.](#), 115 Fla. 48, 155 So. 745 (1934).
- <sup>4</sup> [Monheit v. Cigna](#), 28 Cal. 2d 19, 168 P.2d 965, 167 A.L.R. 995 (1946).
- <sup>5</sup> [Smith v. City of Arcadia](#), 147 Fla. 375, 2 So. 2d 725, 135 A.L.R. 1458 (1941); [Gould v. City of St. Paul](#), 120 Minn. 172, 139 N.W. 293 (1913).

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## 72 Am. Jur. 2d State and Local Taxation Eleven LIX C Refs.

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### Part Eleven. Sale of Land for Nonpayment of Taxes

### LIX. Rights and Title of Purchaser

### C. Protection of Purchaser's Rights Against Subsequent Changes in Law

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 2663, 2720

West's Key Number Digest, [Taxation](#) 🔑 3062, 3086, 3087

### A.L.R. Library

A.L.R. Index, Tax Sales

West's A.L.R. Digest, [Constitutional Law](#) 🔑 2663, 2720

West's A.L.R. Digest, [Taxation](#) 🔑 3062, 3086, 3087

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## 72 Am. Jur. 2d State and Local Taxation § 869

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LIX. Rights and Title of Purchaser

#### C. Protection of Purchaser's Rights Against Subsequent Changes in Law

## § 869. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 2663, 2720

West's Key Number Digest, [Taxation](#) 🔑 3062, 3086, 3087

The inchoate rights that the purchaser at a tax sale acquires are contractual and are protected by the constitutional guaranty against impairment of contract obligations from alteration in substance by subsequent legislation.<sup>1</sup> Not every statute that affects the value of the contract, however, necessarily impairs its obligation; a statute may constitutionally enhance the cost and difficulty of performance or diminish the value of such performance to the other party to a contract so long as it leaves the obligation of performance in full force.<sup>2</sup> A subsequently enacted statute that places on the purchaser or certificate holder what may be termed "substantive burdens" has no effect upon his or her rights, which must be governed by the statute in effect at the time of sale or issuance of the certificate.<sup>3</sup> Subsequent legislation may limit only those rights which are remedial<sup>4</sup> or which do not affect the substance of the tax sale purchaser's contract.<sup>5</sup> However, because no person can acquire a vested right in remedial measures, the legislature may change the remedy.<sup>6</sup> The legislature may also make a subsequent statute relating to a mere matter of remedy, which does not affect the substance of the purchaser's contract, applicable to a prior purchaser or certificate holder.<sup>7</sup>

A statute in terms applicable to subsequent sales only does not affect a prior purchaser.<sup>8</sup>

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### Footnotes

<sup>1</sup> [Wood v. Lovett](#), 313 U.S. 362, 61 S. Ct. 983, 85 L. Ed. 1404 (1941).

<sup>2</sup> [Curtis v. Whitney](#), 80 U.S. 68, 20 L. Ed. 513, 1871 WL 14754 (1871).

- 3                               State v. Osten, 91 Mont. 76, 5 P.2d 562 (1931).
- 4                               Curtis v. Whitney, 80 U.S. 68, 20 L. Ed. 513, 1871 WL 14754 (1871).
- 5                               MacFarland v. Jackson, 137 U.S. 258, 11 S. Ct. 79, 34 L. Ed. 664 (1890).
- 6                               Am. Jur. 2d, Constitutional Law § 750.
- 7                               Violet Trapping Co. v. Grace, 297 U.S. 119, 56 S. Ct. 386, 80 L. Ed. 518 (1936).
- 8                               Eldridge v. Richmond, 120 Mich. 586, 79 N.W. 807 (1899).

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## 72 Am. Jur. 2d State and Local Taxation § 870

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### Part Eleven. Sale of Land for Nonpayment of Taxes

### LIX. Rights and Title of Purchaser

### C. Protection of Purchaser's Rights Against Subsequent Changes in Law

## § 870. Changing conclusive or prima facie character of tax deed

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2663, 2720

West's Key Number Digest, [Taxation](#)  3062, 3086, 3087

A purchaser has the right to rely on a statute in effect at the time that he or she acquired the property at the tax sale, under which the deed would, after expiration of the redemption period, become conclusive or prima facie evidence of the regularity of the proceedings and the validity of the sale.<sup>1</sup> The legislature may not, under the guise of changing a remedy or a rule of evidence, impair a vested right under an existing contract.<sup>2</sup>

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### Footnotes

<sup>1</sup> [Wood v. Lovett](#), 313 U.S. 362, 61 S. Ct. 983, 85 L. Ed. 1404 (1941).

<sup>2</sup> [Blakemore v. Cooper](#), 15 N.D. 5, 106 N.W. 566 (1905).

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## 72 Am. Jur. 2d State and Local Taxation § 871

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### Part Eleven. Sale of Land for Nonpayment of Taxes

#### LIX. Rights and Title of Purchaser

#### C. Protection of Purchaser's Rights Against Subsequent Changes in Law

### § 871. Provisions giving right to refund or to lien for taxes paid in case of invalid sale or certificate

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 2663, 2720

West's Key Number Digest, [Taxation](#) 🔑 3062, 3086, 3087

Provisions of the tax sale laws for refund to the purchaser at a tax sale in the event that the sale is declared invalid create contract rights in favor of purchasers, and any attempt to repeal or abolish such provisions is unconstitutional as to purchasers whose rights exist at the time of the repeal or abolition of the statute.<sup>1</sup> Likewise, the right to a lien existing under a statute prevailing at the time of a tax sale for the amount paid and for subsequent taxes paid by the purchaser, in the event the sale is declared to be invalid, is a contract right, and a subsequent statute extinguishing such lien in the event of the purchaser's failure to serve notice of the expiration of the time for redemption within six years from the date of the tax judgment sale and to record the tax certificate within seven years from that date does not extinguish the lien of a purchaser acquiring the certificate prior to the enactment of such statute.<sup>2</sup> However, the legislature may constitutionally modify remedial rights in this respect.<sup>3</sup>

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#### Footnotes

<sup>1</sup> [State v. Krahmer](#), 105 Minn. 422, 117 N.W. 780 (1908).

<sup>2</sup> [Blakeley v. Mann](#), 153 Minn. 415, 190 N.W. 797 (1922).

<sup>3</sup> [Lain v. Shepardson](#), 18 Wis. 59, 1864 WL 1200 (1864).

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## 72 Am. Jur. 2d State and Local Taxation § 872

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### Part Eleven. Sale of Land for Nonpayment of Taxes

### LIX. Rights and Title of Purchaser

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## § 872. When taxing unit becomes purchaser; assignee from taxing unit

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 2663, 2720

West's Key Number Digest, [Taxation](#) 🔑 3062, 3086, 3087

The right of the purchaser at a tax sale to protection against the impairment of contractual rights by any subsequent legislation affecting the substance of those rights does not extend to a county, municipality, or other taxing unit purchasing property at a tax sale; its rights as purchaser are not protected by the constitutional guaranty against impairment of contract obligations.<sup>1</sup> Where, however, a public body has bid in land at a tax sale and then assigned the tax sale certificates, the assignee becomes entitled to the protection of the guaranty against impairment of obligation of contract; statutes enacted after the assignment cannot be made applicable to the assignee insofar as they might affect substantial rights acquired by such assignment.<sup>2</sup>

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### Footnotes

<sup>1</sup> [Violet Trapping Co. v. Grace](#), 297 U.S. 119, 56 S. Ct. 386, 80 L. Ed. 518 (1936).

<sup>2</sup> [State v. McDonald](#), 26 Minn. 145, 1 N.W. 832 (1879).

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## 72 Am. Jur. 2d State and Local Taxation § 873

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### Part Eleven. Sale of Land for Nonpayment of Taxes

### LIX. Rights and Title of Purchaser

### C. Protection of Purchaser's Rights Against Subsequent Changes in Law

## § 873. Miscellaneous applications of rule

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 2663, 2720

West's Key Number Digest, [Taxation](#) 🔑 3062, 3086, 3087

The legislature cannot constitutionally impair the obligation of the contract by repealing the statutes under which the sale was made.<sup>1</sup> Statutes making the right to a tax deed subject to the lien of assessments or to the lien of other taxes cannot constitutionally be made to apply to tax sale purchasers acquiring their rights prior to its enactment, but a statute enacted subsequently to the purchase of the certificates of delinquency in question may add to the prerequisites to foreclosure of certificates of delinquency the payment of local improvement assessments.<sup>2</sup> The legislature may prescribe the form of a deed to be given on a previous sale because such a statute affects no substantial right of the purchaser at the tax sale.<sup>3</sup>

Statutes requiring recordation of the certificate or the perfecting of the tax title within a certain time, when a reasonable time is allowed, are not unconstitutional when applied to purchasers under prior tax sales.<sup>4</sup> Such a requirement is merely a step in the completion of the record title, not more burdensome than the giving of the notice and not more burdensome if performed within a reasonable time than if performed later.<sup>5</sup>

When the statutes in force at the time of a tax sale or the acquisition of tax certificates fix or limit the time within which action may be brought or application made, after the expiration of the redemption period, for a deed or lease, subsequent changes shortening the period in which such deed or lease may be applied for, at least when reasonable and giving the purchaser ample opportunity to procure his or her deed or lease, do not unconstitutionally impair his or her contract rights.<sup>6</sup>

Footnotes

- 1 [Blakemore v. Cooper](#), 15 N.D. 5, 106 N.W. 566 (1905).
- 2 [Everett v. Adamson](#), 106 Wash. 355, 180 P. 144 (1919).
- 3 [Lain v. Shepardson](#), 18 Wis. 59, 1864 WL 1200 (1864).
- 4 [State v. Krahmer](#), 105 Minn. 422, 117 N.W. 780 (1908).
- 5 [Northern Counties Land Co. v. Excelsior Land, Min. & Development Co.](#), 146 Minn. 207, 178 N.W. 497 (1920).
- 6 [MacFarland v. Jackson](#), 137 U.S. 258, 11 S. Ct. 79, 34 L. Ed. 664 (1890).

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